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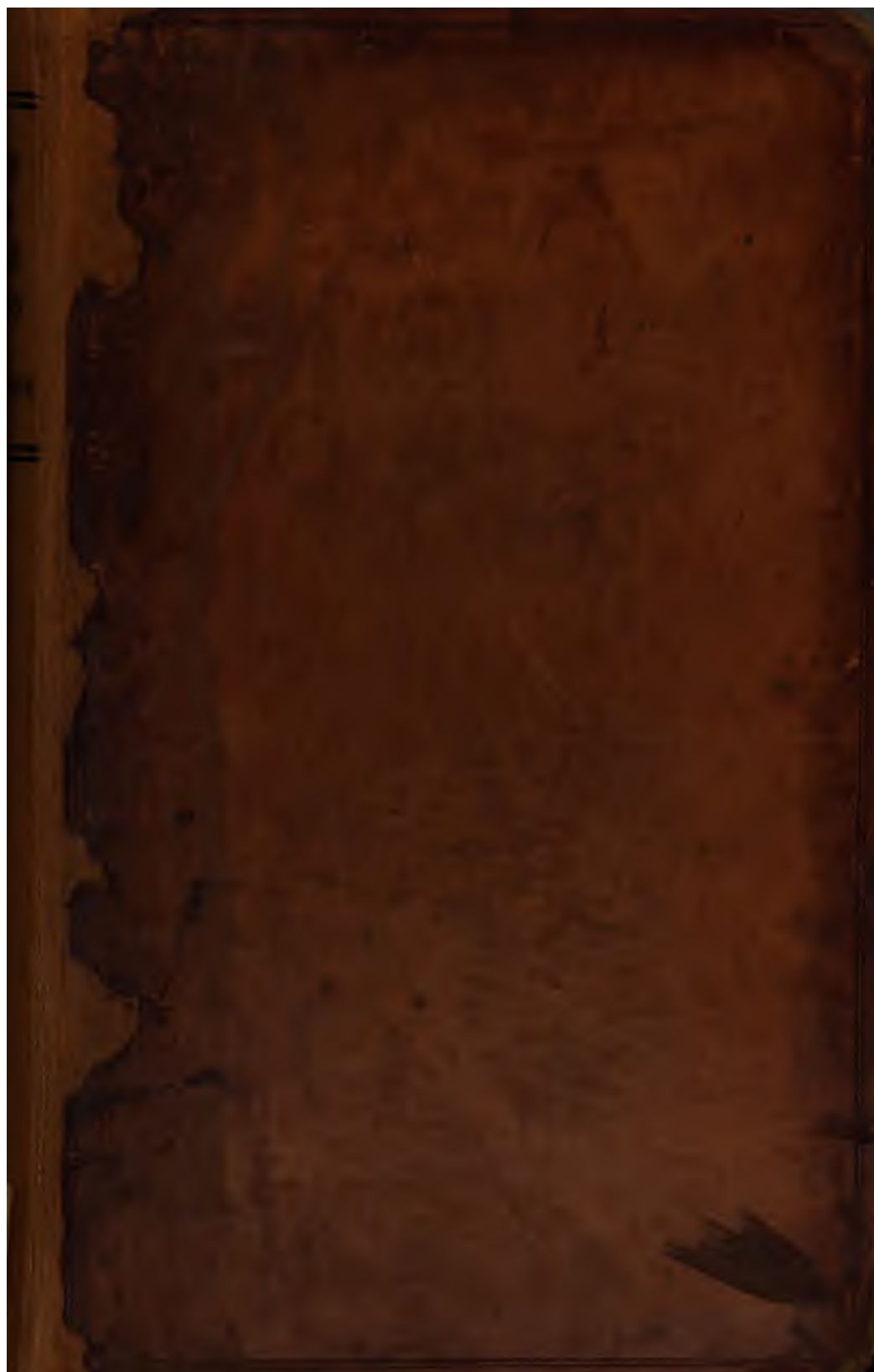
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**T. FINCH**  
*Coll. De Joh. Bapt. Oxon.*

TAYLOR INSTITUTION.

BEQUEATHED

TO THE UNIVERSITY

BY

ROBERT





AN  
ANALYSIS  
OF THE  
LAWS  
OF  
ENGLAND.

By WILLIAM BLACKSTONE, Esq.

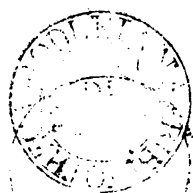
BARRISTER AT LAW.

THE SIXTH EDITION.

OXFORD,

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M. DCC. LXXI.



## P R E F A C E.

**I**T hath often been observed with Concern, that the Study of the Laws of our Country hath been totally neglected in the usual Education of ENGLISH Gentlemen; and, in particular, that no Opportunities of cultivating this Branch of Learning have hitherto been afforded in those excellent and illustrious Seminaries, wherein every other Science is taught in it's utmost Perfection. To remedy, in some little Degree, so just a Complaint, the Compiler of the following Sheets was induced about three Years ago \* to institute, and since to continue, a Course of Lectures, calculated for the Promotion of this Study in the University of OXFORD. And as he was encouraged to enter upon this Undertaking by Gentlemen, both in the University and

\* Nov. 6. 1753.



*out of it, for whose Learning and Judgment the World has the highest Deference ; so he cannot but acknowlege, with due Gratitude, the favorable Reception which hath been given it : A Mark of Approbation, which he is sensible must be attributed entirely to the Propriety of the Design, and not to the Manner of it's Execution.*

*In order to render this Attempt more extensively useful, he thought it incumbent upon him to accommodate his Lectures, not only to the Use of such Students, as were more immediately designed for the Profession of the common Law ; but also of such other Gentlemen, as were desirous of some general Acquaintance with the Constitution and legal Polity of their native Country. He therefore made it his first Endeavour, to mark out a Plan of the Laws of ENGLAND, so comprehensive, as that every Title might be reduced under some or other of it's general Heads, which the Student might afterwards pursue to any Degree of Minuteness ; and at the same time so contracted, that the Gentleman might with tolerable Application contemplate and understand the Whole. For if this was successfully performed, he apprehended*  
he

## P R E F A C E.

v

*he should then be enabled, with greater Perspicuity and Ease, to execute the Remainder of his Design; in deducing the History and Antiquities of the principal Branches of Law, in selecting and illustrating their fundamental Principles and leading Rules, in explaining their Utility and Reason, and in comparing them with the Laws of Nature and of other Nations.*

*In the Pursuit of these his Endeavours, he found himself obliged to adopt a Method in many respects totally new. The most early, and indeed the most valuable, of those who have laboured in reducing our Laws to a System, are GLANVIL and BRACTON, BRITTON and the Author of FLETA: But these, and all others who preceded King HENRY the eighth, are so occupied in antient (he does not say, useless) Learning, that it had been but an awkward Attempt to engraft on their Stock the Improvements of later Ages. — FITZHERBERT, and BROOK, and the subsequent Authors of Abridgments, have chosen a Method, the least adapted of any to convey the Rudiments of a Science; namely, that of the Alphabet. — Lord BACON, in his Elements, hath purposely avoided any regular Order; selecting only some*

*distinct and dis-joined Apborisms, according to his own Account of them; which however he hath expounded in so excellent a Manner, that the Narrowness of his Plan is therefore the more to be regretted. — The Institutes of Sir EDWARD COKE are unfortunately as deficient in Method, as they are rich in Matter: at least, the two first Parts of them; wherein, acting only the Part of a Commentator, he hath thrown together an infinite Treasure of Learning in a loose desultory Order. — Dr COWEL hath indeed endeavoured to reduce the Law of ENGLAND, in his Latin Institutions, to the Model of those of JUSTINIAN: And we cannot be surprized, that so forced and unnatural a Contrivance should be lame and defective in it's Execution. — Sir HENRY FINCH's Discourse of Law is a Treatise of a very different Character: His Method is greatly superior to all that were before extant; his Text is weighty, concise, and nervous; his Illustrations are apposite, clear, and authentic. But, with all these Advantages, it is not sufficiently adapted to modern Use; since the subsequent Alterations of the Law, by the Abolition of military Tenures, and the Difuse of real Actions, have rendred near half of his Book obsolete. — Dr WOOD*  
*has*

## P R E F A C E.

vñ

*has effectually removed this Objection, but has fallen into the contrary Extreme; his Institute being little more than FINCH's Discourse enlarged, and so thoroughly modernized, as to leave us frequently in the Dark, with regard to the Reason and Original of many still subsisting Laws, which are founded in remote Antiquity. And as in some Titles his Plan is too contracted, in others also it seems to be too diffuse. Upon the Whole however his Work is undoubtedly a valuable Performance; and great are the Obligations of the Student to him, and his Predecessor FINCH, for their happy Progress in reducing the Elements of Law from their former Chaos to a regular methodical Science. Yet, as neither could be followed entirely in the proposed Course of academical Lectures, it was judged the most eligible Way not to adopt them in Part; especially as there were extant the Outlines of a still superior Method, sketched by a very masterly Hand.*

*For, of all the Schemes hitherto made public for digesting the Laws of ENGLAND, the most natural and scientific of any, as well as the most comprehensive, appeared to be that of Sir MATTHEW HALE, in his posthumous Analysis*  
of

of the Law. *This Distribution therefore hath been principally followed: with what Variations, the learned Reader will easily perceive from the ensuing Abstract; and it may be no unprofitable Employment for the Student to learn by comparing them. For these the Compiler thinks it unnecessary to give his Reasons: For, since those who have gone before him have successively deviated from each other's Plan, he hopes to be excused, if, in order to adapt some things the better to his own Capacity, he frequently departs from them all; having in general rather chosen, by compounding their several Schemes, to extract a new Method of his own, than implicitly to copy after any.*

*Indeed had he closely adhered to HALE's, or any other Distribution, it might probably have rendered the Task he had undertaken less laborious; at least, it would have saved him the Trouble of the present Publication. For he soon became sensible of one Inconvenience attending his Deviation from former Systems: That, in a Course of oral Lectures, on a Science entirely new, and sometimes a little abstruse, it was not always easy for his Audience so far to command their Attention, as at once to apprehend both*  
*the*

## P R E F A C E. ix

*the Method and Matter delivered: And, whenever, through Inattention in the Hearers, or (too frequently) through Obscurity in the Reader, any Point of Importance was forgotten or misunderstood, it became next to impossible to gather up the broken Clue, without having some written Compendium to which they might resort upon Occasion. These Considerations gave Birth to the following ANALYSIS, which exhibits the Order, and principal Divisions, of his Course; and is only to be considered as a larger Syllabus, interspersed with a few Definitions and general Rules, to assist the Recollection of such Gentlemen as have formerly honoured him with their Attendance; or such as may hereafter become his Auditors, till this Task shall fall into abler Hands, and the Province, which he originally undertook in a private Capacity, shall be put upon a public Establishment\*.*

*To the ANALYSIS is subjoined an APPENDIX, consisting of such Tables, Copies of Instruments, and Forms of judicial Proceedings, as were judged to be necessary for explaining certain*

\* This was done in 1758, in Consequence of Mr VINER's Benefaction; and the Author had the Honour to be unanimously elected the first Professor of municipal Law.

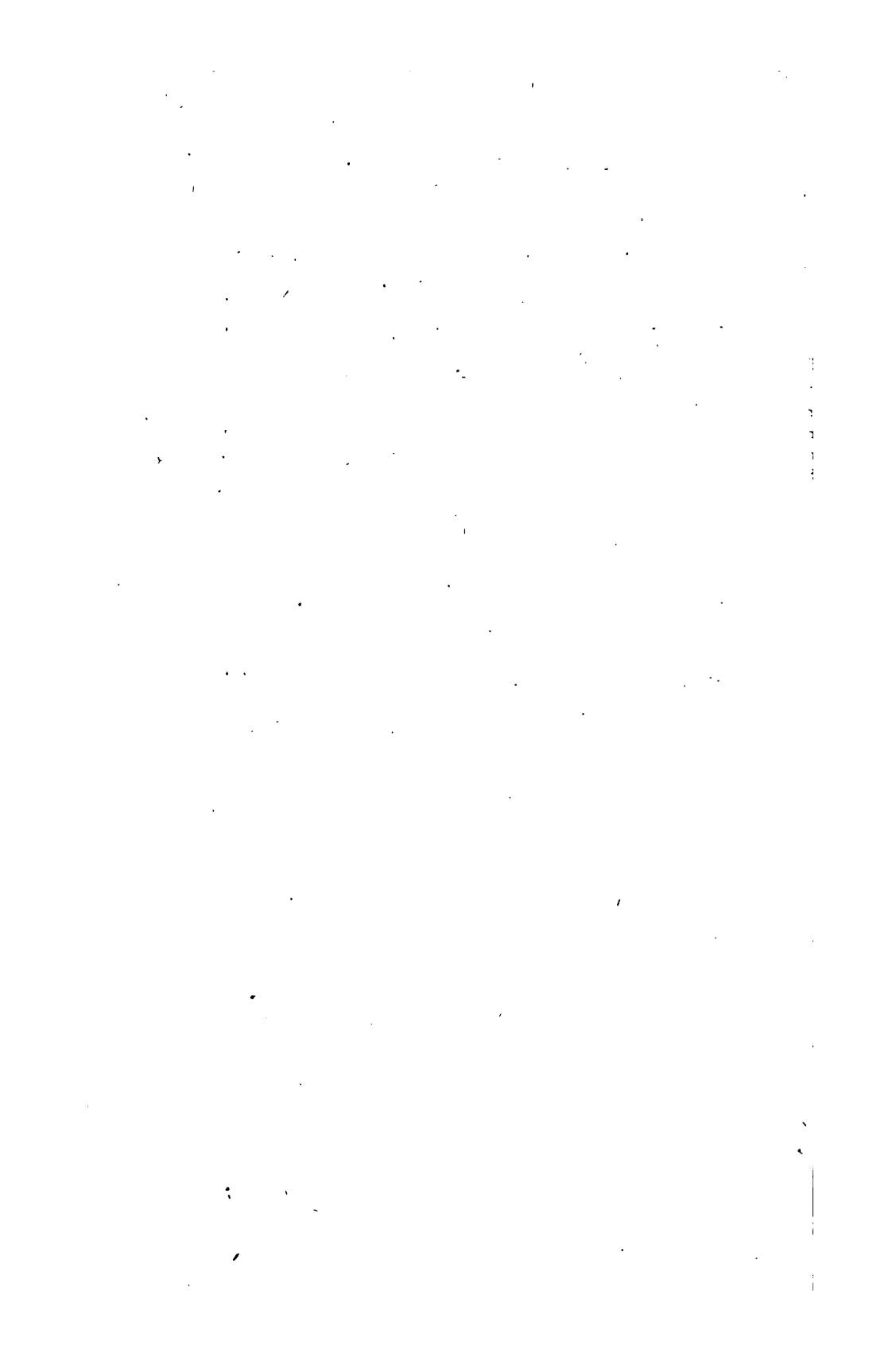
*Principles, and Matters of daily Practice ; of which it was however impracticable to convey any adequate Idea by verbal Descriptions only.*

*With regard to the Book in general, if by any Accident it should fall into other Hands than those for whose Use it is designed, the Author hopes it will meet with that Candour which is ever the Companion of sound Learning. The Gentlemen of his own Profession, he is confident, will suspend their Censures of whatever (in this Abstract) may appear either dubious or unwarrantable ; at least till they are informed how far (in the Work at large) it is guarded by Restrictions, qualified by Exceptions, or supported by Reason and Authority. And, in the end, he must beg Leave to apply to his whole Undertaking, as well as to this trifling Performance, the Words of his Master LITTLETON : “ Jeo ne voill que  
 “ tu crez, que tout ceo que jeo ay dit en lez  
 “ ditez Lyvers soit LEY ; quar jeo ne ceo voill  
 “ entreprendre, ne presumer sur moy. — Nient  
 “ meyns, coment que certen Choses, queux  
 “ sont motes et specyfieez en lez ditez Lyvers,  
 “ ne sont pas LEY, uncore tielx Choses ferront  
 “ toy plus apte et able de entendre et apprendre  
 “ lez Argumentez et lez Reasons del LEY.”*

*To*

*To this, which was thought proper to be premised before the former Editions of the ANALYSIS, from 1756 to 1762, it is now only necessary to add, that the COMMENTARIES ON THE LAWS OF ENGLAND (of which this Work is the Outline or Abstract) have since been made public, with a few Alterations and Improvements; and that principally in point of Subdivision and Method. This Edition is therefore accommodated to those Alterations and Improvements; and will be found to correspond as exactly with the printed COMMENTARIES, as the former Impressions were calculated to answer to the Lectures then read by the PROFESSOR.*





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                - 4. Waste.
                - 5. Subtraction.
                - 6. Disturbance.
            - 2. Chattels personal.
          - 2. Real; by
            - 1. Outter, or Dispossession of
              - 1. Freeholds.
              - 2. Chattels real.
            - 2. Trespass.
            - 3. Nuisance.
            - 4. Waste.
            - 5. Subtraction.
            - 6. Disturbance.
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AN  
ANALYSIS  
OF THE  
LAWS OF ENGLAND.

INTRODUCTION,  
*Of the STUDY, NATURE, and EXTENT,  
of the LAWS of ENGLAND.*

SECTION I.  
*Of the STUDY of the LAW.*

I.

**T**HE general UTILITY of the STUDY of the English common LAW will principally appear, from considering the peculiar Situations of,  
1. Gentlemen of Fortune. 2. The Nobility. 3. Persons in liberal Professions.

2.

The Causes of it's Neglect were, chiefly, the Revival of the Study of the ROMAN LAWS in the

A

twelfth

twelfth Century, their Adoption by the Clergy and Universities, and the illiberal Jealousy that subsisted between the Patrons and Students of each.

3.

The Establishment of the Court of COMMON PLEAS at Westminster preserved the common Law, and promoted it's Study in that Neighbourhood, exclusive of the two Universities.

4.

But the Universities are now the most eligible Places for laying the Foundations of this, as of every other liberal Accomplishment; by tracing out the Principles and Grounds of the Law, even to their original Elements.

## S E C T. II.

### *Of the Nature of LAWS in general.*

I.

**L**AW is a Rule of Action, prescribed by a superior Power.

2.

NATURAL Law is the Rule of HUMAN Action, prescribed by the Creator, and discoverable by the Light of Reason.

3.

The DIVINE, or REVEALED, Law (considered as a Rule of Action) is also the Law of Nature, imparted by God himself.

4. The

Sect. 2. *the* LAWS of ENGLAND. 3

4.

The Law of NATIONS is that which regulates the Conduct and mutual Intercourse of independent States with each other, by Reason and natural Justice.

5.

MUNICIPAL, or CIVIL, Law is the Rule of civil Conduct, prescribed by the supreme Power in a State, commanding what is RIGHT, and prohibiting what is WRONG.

6.

SOCIETY is formed for the Protection of Individuals; and STATES, or Government, for the Preservation of Society.

7.

In all States there is an absolute SUPREME Power, to which the Right of Legislation belongs; and which, by the singular Constitution of these Kingdoms, is vested in the King, Lords, and Commons.

8.

The PARTS of a Law are, 1. The DECLARATORY; which defines what is Right, and Wrong. 2. The DIRECTORY; which consists in commanding the Observation of Right, or prohibiting the Commission of Wrong. 3. The REMEDIAL; or Method of recovering private Rights, and redressing private Wrongs. 4. The VINDICATORY Sanction of Punishments for public Wrongs; wherein consists the most forcible Obligation of human Laws.

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9. To



9.

TO INTERPRET a Law, we must enquire after the Will of the Maker: Which may be collected either from the Words, the Context, the Subject-matter, the Effects and Consequence, or the Spirit and Reason of the Law.

10.

From the latter Method of Interpretation arises EQUITY, or the Correction of that wherein the Law (by reason of it's Universality) is deficient.

## S E C T. III.

*Of the Laws of ENGLAND.*

2.

THE Laws of ENGLAND are of two Kinds; the UNWRITTEN or COMMON Law, and the WRITTEN or STATUTE Law.

2.

The UNWRITTEN Law includes, 1. General Customs. 2. Particular Customs. 3. Particular Laws.

3.

GENERAL CUSTOMS, or the COMMON Law properly so called, are founded upon immemorial universal Usage, whereof judicial Decisions are the Evidence; which Decisions are preserved in the public Records, explained in the Year-Books and Reports, and digested by Writers of approved Authority.

4. PARTI-

**SECT. 3. the LAWS of ENGLAND. 5**

**4.**

**PARTICULAR CUSTOMS** are those which are only in Use within some peculiar Districts; as Gavelkind, the Customs of LONDON, &c.

**5.**

These — 1. must be proved to exist; — 2. must appear to be legal; that is immemorial, continued, peaceable, reasonable, certain, compulsory, and consistent; — 3. must, when allowed, receive a strict Construction.

**6.**

**PARTICULAR LAWS** are such as, by special Custom, are adopted and used only in certain peculiar Courts, under the Superintendence and Controul of the common and statute Law; namely, the ROMAN CIVIL and CANON LAWS.

**7.**

The **WRITTEN OR STATUTE LAWS** are the Acts which are made by the King, Lords, and Commons, in Parliament; to supply the Defects, or amend what is amiss, of the unwritten Law.

**8.**

In order to give a more specific Relief, than can sometimes be had, through the Generality of both the unwritten and written Law, in Matters of private Right, it is the Office of EQUITY to interpose.

## S E C T. IV.

*Of the COUNTRIES subject to the Laws of  
ENGLAND.*

## I.

THE Laws of ENGLAND are not received in their full Extent in any other Territories, besides the Kingdom of ENGLAND, and the Dominion of WALES; which have, in most respects, an entire Communion of Laws.

## 2.

SCOTLAND, notwithstanding the Union, retains it's own municipal Laws; though subject to Regulation by the BRITISH Parliament.

## 3.

BERWICK is governed by it's own local Usages, derived from the Scots Law, but bound by all Acts of Parliament.

## 4.

IRELAND is a distinct subordinate Kingdom, governed by the common Law of ENGLAND; but not bound by modern Acts of the BRITISH Parliament, unless particularly named.

## 5.

The Isle of MAN, the NORMAN Isles, (as GUERNSEY, &c,) and our PLANTATIONS abroad, are governed by their own Laws; but are bound by Acts of the BRITISH Parliament, if specially named therein.

6. The

**Sect. 4. *the* LAWS of ENGLAND. 7**

**6.**

The Territory of ENGLAND is divided, EC-  
CLESIASTICALLY, into Provinces, Dioceses, Arch-  
deaconries, rural Deanries, and Parishes.

**7.**

The CIVIL Division is, first, into Counties, of  
which some are palatine; then, sometimes, into  
Rapes, Lathes, or Trithings; next into Hundreds,  
or Wapentakes; and, lastly, into Towns, Vills, or  
Tithings.



## BOOK THE FIRST.

*Of the* RIGHTS of PERSONS.

## CHAPTER I.

*Of the* ABSOLUTE RIGHTS of INDIVIDUALS.

## I.

THE Objects of the LAWS of ENGLAND are,  
1. RIGHTS, 2. WRONGS.

## 2.

RIGHTS are the Rights of PERSONS, or the  
Rights of THINGS.

## 3.

The Rights of PERSONS are such as concern, and  
are annexed to, the Persons of Men: And, when  
the Person TO whom they are due is regarded, they  
are called (simply) RIGHTS; but, when we consider  
the Person FROM whom they are due, they are then  
denominated DUTIES.

## 4. PER-

4.

Persons are either NATURAL, that is, such as they are formed by Nature; or ARTIFICIAL, that is, created by human Policy, as Bodies politic or CORPORATIONS.

5.

The Rights of NATURAL Persons are, 1. ABSOLUTE, or such as belong to Individuals. 2. RELATIVE, or such as Regard Members of Society.

6.

The ABSOLUTE RIGHTS of INDIVIDUALS, regarded by the municipal Laws, (which pay no Attention to DUTIES of the absolute Kind) compose what is called political or civil LIBERTY.

7.

Political or civil LIBERTY is the natural Liberty of Mankind, so far restrained by human Laws as is necessary for the Good of Society.

8.

The absolute Rights, or civil Liberties, of ENGLISHMEN, as frequently declared in Parliament, are principally three; the Right of PERSONAL SECURITY, of PERSONAL LIBERTY, and of PRIVATE PROPERTY.

9.

The Right of PERSONAL SECURITY consists in the legal Enjoyment of Life, Limb, Body, Health, and Reputation.

**10.**

The Right of **PERSONAL LIBERTY** consists in the free Power of **Loco-motion**, without illegal Restraint or Banishment.

**11.**

The Right of **PRIVATE PROPERTY** consists in every Man's free Use and Disposal of his own lawful Acquisitions, without Injury or illegal Diminution.

**12.**

Besides these three **PRIMARY** Rights, there are others which are **SECONDARY** and subordinate; viz. (to preserve the former from unlawful Attacks)

1. The Constitution and Power of Parliaments :
2. The Limitation of the King's Prerogative:—And, (to vindicate them when actually violated)
3. The regular Administration of publick Justice :
4. The Right of Petitioning for Redress of Grievances :
5. The Right of Having and Using Arms for Self-Defence.

C H A P. II.

*Of the* PARLIAMENT.

1.

**T**HE RELATIONS of Persons are, 1. PUBLIC.  
2, PRIVATE. The PUBLIC Relations are those of MAGISTRATES and PEOPLE. MAGISTRATES are SUPREME, OR SUBORDINATE. And of SUPREME Magistrates, in ENGLAND, the PARLIAMENT is the supreme LEGISLATIVE, the KING the supreme EXECUTIVE.

2.

PARLIAMENTS, in some Shape, are of as high Antiquity as the SAXON Government in this Island; and have subsisted, in their present Form, at least five hundred Years.

3.

The Parliament is assembled by the King's Writs, and it's Sitting must not be intermitted above three Years.

4.

It's constituent Parts are the King's Majesty, the Lords spiritual and temporal, and the Commons represented by their Members: Each of which Parts has a negative, or necessary, Voice in making Laws.

5.

With regard to the GENERAL Law of Parliament; — It's Power is absolute: Each House is the Judge of it's own Privileges: And all the Members  
of



of either House are entitled to the Privilege of Speech, of Person, of their Domestic, and of their Lands and Goods.

## 6.

The PECULIAR Privileges of the Lords (besides their judicial Capacity) are to hunt in the King's Forests; to be attended by the Sages of the Law; to make Proxies; to enter Protests; and to regulate the Election of the sixteen Peers of NORTH-BRITAIN.

## 7.

The PECULIAR Privileges of the Commons are to frame Taxes for the Subject; and to determine the Merits of their own Elections, with regard to the Qualifications of the Electors, and Elected, and the Proceedings at Elections themselves.

## 8.

Bills are usually twice read in each House, committed, engrossed, and then read a third Time; and when they have obtained the Concurrence of both Houses, and received the royal Assent, they become Acts of Parliament.

## 9.

The Houses may adjourn themselves; but the King only can prorogue the Parliament.

## 10.

Parliaments are dissolved, 1. At the King's Will. 2. By the Demise of the Crown, that is, within six Months after. 3. By Length of Time, or having sat for the space of seven Years.

C H A P. III.

*Of the KING, and his TITLE.*

I.

**T**HE supreme EXECUTIVE Power of this Kingdom is lodged in a single Person; the KING or QUEEN.

2.

This royal Person may be considered with regard to, 1. His Title. 2. His royal Family. 3. His Councils. 4. His Duties. 5. His Prerogative, 6. His Revenue.

3.

With regard to his TITLE; The Crown of ENGLAND, by the positive Constitution of the Kingdom, hath ever been descendible, and so continues.

4.

The Crown is descendible in a Course peculiar to itself.

5.

This Course of Descent is subject to Limitation by Parliament.

6.

Notwithstanding such Limitations, the Crown retains it's descendible Quality, and becomes hereditary in the Prince to whom it is limited.

7. King

7.

King **EGBERT**, King **CANUTE**, and King **WILLIAM I.** have been successively constituted the common Stocks, or Ancestors, of this Descent.

8.

At the Revolution the Convention of Estates, or representative Body of the Nation, declared, that the Misconduct of King **JAMES II.** amounted to an Abdication of the Government, and that the Throne was thereby **VACANT**.

9.

In consequence of this Vacancy, and from a Regard to the antient Line, the Convention appointed the next protestant Heirs of the Blood royal of King **CHARLES I.** to fill the vacant Throne, in the old Order of Succession ; with a temporary Exception, or Preference, to the Person of King **WILLIAM III.**

10.

On the impending Failure of the protestant Line of King **CHARLES I.** (whereby the Throne might again have become vacant) the King and Parliament extended the Settlement of the Crown to the protestant Line of King **JAMES I.** viz. to the Princess **SOPHIA** of **HANOVER**, and the Heirs of her Body, being Protestants : And She is now the common Stock, from whom the Heirs of the Crown must descend.

C H A P. IV.

*Of the KING's royal FAMILY.*

1.

**T**HE KING's royal FAMILY consists, first, of the QUEEN: who is either regnant, consort, or dowager.

2.

The Queen consort is a public Person; and hath many personal Prerogatives and distinct Revenues.

3.

The Prince and Princess of WALES, and the Princess-royal, are peculiarly regarded by the Law.

4.

The other Princes of the Blood-royal are only intitled to Precedence.

C H A P. V.

*Of the COUNCILS belonging to the KING.*

1.

**T**HE KING's COUNCILS are, 1. The PARLIAMENT. 2. The great Council of PEERS. 3. The JUDGES, for Matters of Law. 4. The PRIVY Council.

2. In

## 2.

In PRIVY-COUNSELLORS may be considered,  
 1. Their Creation. 2. Their Qualifications. 3. Their  
 Duties. 4. Their Powers. 5. Their Privileges.  
 6. Their Dissolution.

## C H A P. VI.

*Of the KING'S DUTIES.*

## I.

**T**HE KING'S DUTIES are to govern his People according to Law, to execute Judgment in Mercy, and to maintain the established Religion. These are his Part of the original Contract between himself and the People; founded in the Nature of Society, and expressed in his Oath at the Coronation.

## C H A P. VII.

*Of the KING'S PREROGATIVE.*

## I.

**P**REROGATIVE is that special Power and Pre-eminence, which the King hath above other Persons, and out of the ordinary Course of Law, in right of his regal Dignity.

2. Such

2.

Such PREROGATIVES are either DIRECT, or INCIDENTAL. The INCIDENTAL, arising out of other Matters, are considered as they arise: We now treat only of the DIRECT.

3.

The DIRECT Prerogatives regard, 1. The KING'S DIGNITY, or royal Character; 2. His AUTHORITY, or regal Power: 3. His REVENUE, or royal Income.

4.

The KING'S DIGNITY consists in the legal Attributes of, 1. Personal Sovereignty. 2. Absolute Perfection. 3. Political Perpetuity.

5.

In the KING'S AUTHORITY, or regal Power, consists the executive Part of Government.

6.

In FOREIGN Concerns; the KING, as the Representative of the Nation, has the Right or PREROGATIVE, 1. Of sending and receiving Embassadors. 2. Of making Treaties. 3. Of proclaiming War or Peace. 4. Of issuing Reprisals. 5. Of granting Safe-Conducts.

7.

In DOMESTIC Affairs; the KING is, first, a constituent Part of the supreme legislative Power; hath a Negative upon all new Laws; and is bound by no Statute, unless specially named therein.

B

8. He

## 8.

He is also considered as the General of the Kingdom, and may raise Fleets and Armies, build Forts, appoint Havens, erect Beacons, prohibit the Exportation of Arms and Ammunition, and confine his Subjects within the Realm, or recall them from foreign Parts.

## 9.

The KING is also the Fountain of Justice, and general Conservator of the Peace; and therefore may erect Courts, (wherein he hath a legal Ubiquity) prosecute Offenders, pardon Crimes, and issue Proclamations.

## 10.

He is likewise the Fountain of Honour, of Office, and of Privilege.

## 11.

He is also the Arbiter of DOMESTIC Commerce; (not of FOREIGN, which is regulated by the Law of Merchants;) and is therefore entitled to the Erection of public Marts, the Regulation of Weights and Measures, and the Coinage or Legitimation of Money.

## 12.

The KING is, lastly, the supreme Head of the Church; and, as such, convenes, regulates and dissolves Synods, nominates Bishops, and receives Appeals in all ecclesiastical Causes.

CHAP. VIII.

*Of the KING's REVENUE.*

I.

**T**HE KING's REVENUE is either ORDINARY OF EXTRAORDINARY. And the ORDINARY is, 1. ECCLESIASTICAL. 2. TEMPORAL.

2.

The KING's ECCLESIASTICAL Revenue consists in, 1. The Custody of the Temporalities of vacant Bishopricks. 2. Corodies and Pensions. 3. Extraparochial Tithes. 4. The first Fruits and Tenths of Benefices.

3.

The KING's ordinary TEMPORAL Revenue consists in, 1. The demesne Lands of the Crown. 2. The hereditary Excise; being Part of the Consideration for the Purchase of his feudal Profits, and the Prerogatives of Purveyance and Pre-emption. 3. An annual Sum issuing from the Duty on Wine Licences; being the Residue of the same Consideration. 4. His Forests. 5. His Courts of Justice. 6. Royal Fish. 7. Wrecks, and Things jetfam, flotsam, and ligan. 8. Royal Mines. 9. Treasure trove. 10. Waifs. 11. Estrays. 12. Forfeitures for Offences, and Deodands. 13. Escheats of Lands. 14. The Custody of Ideots and Lunatics.



4.

The KING'S EXTRAORDINARY REVENUE consists in Aids, Subsidies, and Supplies, granted him by the Commons in Parliament.

5.

Heretofore these were usually raised by Grants of the (nominal) TENTH or FIFTEENTH Part of the Moveables in every Township; or by Scutages, Hydages, and Talliages; which were succeeded by SUBSIDIES assessed upon Individuals, with respect to their Lands and Goods.

6.

A new System of Taxation took place about the time of the Revolution: Our modern Taxes are therefore, 1. ANNUAL. 2. PERPETUAL.

7.

The ANNUAL Taxes are, 1. The Land Tax, or the antient Subsidy raised upon a new Assessment. 2. The Malt Tax, being an annual Excise on Malt, Mum, Cyder, and Perry.

8.

The PERPETUAL Taxes are, 1. The Customs, or Tonnage and Poundage of all Merchandize exported or imported. 2. The Excise Duty, or inland Imposition, on a great Variety of Commodities. 3. The Salt Duty, or Excise on Salt. 4. The Post Office, or Duty for the Carriage of Letters. 5. The Stamp Duty on Paper, Parchment, &c. 6. The Duty on Houses and Windows. 7. The Duty on Licences for hackney Coaches and Chairs. 8. The Duty on Offices and Pensions.

9. Part

9.

Part of this Revenue is applied to pay the Interest of the national Debt, till the Principal is discharged by Parliament.

10.

The Produce of these several Taxes were originally separate and SPECIFIC FUNDS, to answer SPECIFIC LOANS upon their respective Credits; but are now consolidated by Parliament into three principal Funds, the AGGREGATE, GENERAL, and SOUTH-SEA Funds, to answer ALL the Debts of the Nation: the public Faith being also superadded, to supply Deficiencies, and strengthen the Security of the Whole.

11.

The Surplusses of these Funds, after paying the Interest of the national Debt, are carried together, and denominated the SINKING Fund: Which, unless otherwise appropriated by Parliament, is annually to be applied towards paying off some Part of the Principal.

12.

But, previous to this, the AGGREGATE Fund is now charged with an annual Sum for the CIVIL LIST; which is the immediate proper Revenue of the Crown, settled by Parliament on the King at his Accession, for defraying the Charges of civil Government.

## CHAP. IX.

*Of SUBORDINATE Magistrates.*

## 1.

**S**UBORDINATE Magistrates, of the most general Use and Authority, are, 1. SHERIFFS. 2. CORONERS. 3. JUSTICES of the PEACE. 4. CONSTABLES. 5. SURVEYORS of the HIGHWAYS. 6. OVERSEERS of the POOR.

## 2.

The SHERIFF is the Keeper of each County, annually nominated in due Form by the King; and is (within his County) a Judge, a Conservator of the Peace, a ministerial Officer, and the King's Bailiff.

## 3.

CORONERS are permanent Officers of the Crown in each County, elected by the Freeholders; whose Office it is to make Enquiry concerning the Death of the King's Subjects, and certain Revenues of the Crown; and also in particular Cases, to supply the Office of Sheriff.

## 4.

JUSTICES of the PEACE are Magistrates in each County, statutably qualified, and commissioned by the King's Majesty; with Authority to conserve the Peace; to hear and determine Felonies, and other Misdemeanors; and to do many other Acts, committed to their Charge by particular Statutes.

## 5. CON-

5.

CONSTABLES are Officers of Hundreds and Townships, appointed at the ~~Leet~~, and empowered to preserve the Peace, to keep Watch and Ward, ~~and to apprehend Offenders.~~

6.

SURVEYORS of the HIGHWAYS are Officers appointed annually in every Parish; to remove Annoyances in, ~~and to direct the Reparation of, the~~ public Roads.

7.

OVERSEERS of the Poor are Officers appointed annually in every Parish; to relieve such impotent, ~~and employ such sturdy Poor, as are SETTLED in each Parish, — by Birth; — by Parentage; — by Marriage; — or by forty Days Residence, accompanied with,~~ 1. Notice. 2. Renting a Tenement of ten Pounds annual Value. 3. Paying their assessed Taxations. 4. Serving an annual Office. 5. Hiring and Service for a Year. 6. Apprenticeship for seven Years. 7. Having a sufficient Estate in the Parish.

## CHAP. X.

*Of the PEOPLE, whether ALIENS, DENIZENS,  
or NATIVES,*

## I.

**T**HE PEOPLE are either ALIENS, that is, born out of the Dominions, or Allegiance, of the Crown of GREAT BRITAIN; or NATIVES, that is, born within it.

## 2.

Allegiance is the Duty of all Subjects; being the reciprocal Tie of the People to the Prince, in return for the Protection he affords them; and, in NATIVES, this Duty of Allegiance is natural and perpetual; in ALIENS, is local and temporary only.

## 3.

The Rights of NATIVES are also natural and perpetual; those of ALIENS local and temporary only; unless they be made Denizens by the King, or naturalized by Parliament.

CHAP. XI.

*Of the* CLERGY.

I.

THE People, whether Aliens, Denizens, or Natives, are also either CLERGY, that is, all Persons in holy Orders, or in ecclesiastical Offices ; or LAITY, which comprehends the rest of the Nation.

2.

The CLERICAL Part of the Nation, thus defined, are, 1. Archbishops and Bishops; who are elected by their several Chapters, at the Nomination of the Crown, and afterwards confirmed and consecrated by each other. 2. Deans and Chapters. 3. Archdeacons. 4. Rural Deans. 5. Parsons, (under which are included Appropriators) and Vicars; to whom there are generally requisite, holy Orders, Presentation, Institution, and Induction. 6. Curates. To which may be added, 7. Churchwardens. 8. Parish Clerks and Sextons.

## CHAP. XII.

*Of the CIVIL STATE.*

I.

**T**HE LAITY are dividible into three States;  
CIVIL, MILITARY, and MARITIME.

2.

The CIVIL State (which includes all the Nation, except the Clergy, the Army, and the Navy; and many Individuals among them also;) may be divided into the NOBILITY, and the COMMONALTY.

3.

The NOBILITY are Dukes, Marquesses, Earls, Viscounts, and Barons. These had antiently Duties annexed to their respective Honours: They are created either by Writ, that is, by Summons to Parliament; or by the King's Letters patent, that is, by royal Grant: And they enjoy many Privileges, exclusive of their senatorial Capacity.

4.

The COMMONALTY consist of Knights of the Garter, Knights Bannerets, Baronets, Knights of the Bath, Knights Bachelors, Esquires, Gentlemen, Yeomen, Tradesmen, Artificers, and Labourers.

CHAP.

CHAP. XIII.

*Of the MILITARY and MARITIME STATES.*

I.

**T**HE MILITARY State, by the standing constitutional Law, consists of the Militia of each County, raised from among the People by Lot, officered by the principal Landholders, and commanded by the Lord Lieutenant.

2.

The more disciplined occasional Troops of the Kingdom are kept on foot only from Year to Year, by Parliament; and, during that Period, are governed by martial Law, or arbitrary Articles of War, formed at the Pleasure of the Crown.

3.

The MARITIME State consists of the Officers and Mariners of the BRITISH Navy; who are governed by express and permanent Laws, or the Articles of the Navy, established by Act of Parliament.



## CHAP. XIV.

Of MASTER *and* SERVANT.

I.

THE PRIVATE, oeconomical, RELATIONS of Persons are those of, 1. MASTER and SERVANT. 2. HUSBAND and WIFE. 3. PARENT and CHILD. 4. GUARDIAN and WARD.

2.

The first Relation may subsist between a MASTER and four Species of SERVANTS; (for Slavery is unknown to our Laws:) viz. 1. Menial Servants; who are HIRED. 2. Apprentices; who are BOUND by Indentures. 3. Labourers; who are casually EMPLOYED. 4. Stewards, Bailiffs, and Factors; who are rather in a MINISTERIAL State.

3.

From this Relation result divers Powers to the Master, and Emoluments to the Servant.

4.

The Master hath a Property in the Service of his Servant; and must be answerable for such Acts as the Servant does by his express, or implied, Command.

CHAP.

CHAP. XV.

*Of HUSBAND and WIFE.*

1.

THE second private Relation is that of MARRIAGE ; which includes the reciprocal Rights and Duties of HUSBAND and WIFE.

2.

MARRIAGE is duly contracted between Persons, 1. Consenting : 2. Free from canonical Impediments, which make it VOIDABLE : 3. Free also from the civil Impediments,—of prior Marriage ; — of Want of Age ; — of Non-Consent of Parents or Guardians, where requisite ; — and of Want of Reason ; either of which make it totally void. And it must be celebrated by a Clergyman, in due Form and Place.

3.

Marriage is dissolved, 1. By Death. 2. By Divorce in the spiritual Court ; not *a Mensa & Thoro* only, but *a Vinculo Matrimonii*, for canonical Cause existing previous to the Contract. 3. By Act of Parliament ; as, for Adultery.

4.

By Marriage the Husband and Wife become one Person in Law ; which Unity is the principal Foundation of their respective Rights, Duties, and Disabilities.

CHAP.

## CHAP. XVI.

*Of PARENT and CHILD.*

1.

**T**HE third, and most universal, private Relation is that of PARENT and CHILD.

2.

CHILDREN are, 1. LEGITIMATE ; being those who are born in lawful Wedlock, or within a competent time after. 2. BASTARDS, being those who are not so.

3.

The Duties of Parents to LEGITIMATE Children are, 1. Maintenance. 2. Protection. 3. Education.

4.

The Power of Parents consists principally in Correction, and Consent to Marriage. Both may after Death be delegated by Will to a Guardian ; and the former also, living the Parent, to a Tutor or Master.

5.

The Duties of LEGITIMATE Children to Parents are Obedience, Protection, and Maintenance.

6.

The Duty of Parents to BASTARDS is only that of Maintenance.

7.

The Rights of a BASTARD are such only as he can acquire ; for he is incapable of inheriting any thing.

CHAP.

CHAP. XVII.

*Of GUARDIAN and WARD.*

I.

**T**HE fourth private Relation is that of GUARDIAN and WARD, which is plainly derived from the last ; these being, during the Continuance of their Relation, reciprocally subject to the same Rights and Duties.

2.

GUARDIANS are of divers Sorts : 1. Guardians by Nature, or the Parents. 2. Guardians for Nurture, assigned by the ecclesiastical Courts. 3. Guardians in Socage, assigned by the common Law. 4. Guardians by Statute, assigned by the Father's Will. All subject to the Superintendence of the Court of Chancery.

3.

FULL AGE in Male or Female for all Purposes is the Age of twenty one Years ; (different Ages being allowed for different Purposes ; ) till which Age the Person is an INFANT.

4.

AN INFANT, in respect of his tender Years, hath various Privileges, and various Disabilities, in Law : Chiefly with regard to Suits, Crimes, Estates, and Contracts.

CHAP. XVIII.  
*Of* CORPORATIONS.

1.

**B**ODIES politic, or CORPORATIONS, which are ARTIFICIAL Persons, are established for preserving in perpetual Succession certain Rights; which, being conferred on NATURAL Persons only, would fail in Process of Time.

2.

Corporations are, 1. AGGREGATE, consisting of many Members. 2. SOLE, consisting of one Person only.

3.

Corporations are also either SPIRITUAL, erected to perpetuate the Rights of the Church; or LAY. And the LAY are, 1. CIVIL; erected for many temporal Purposes. 2. ELEEMOSYNARY; erected to perpetuate the Charity of the Founder.

4.

Corporations are usually erected, and named, by virtue of the King's royal Charter; but may be created by Act of Parliament.

5.

The Powers incident to all Corporations are, 1. To maintain perpetual Succession. 2. To act in their corporate Capacity like an Individual. 3. To hold Lands, subject to the Statutes of Mortmain. 4. To have a common Seal. 5. To make By-Laws.  
 Which

Which last Power, in spiritual, or eleemosynary Corporations, may be executed by the King or the Founder.

6.

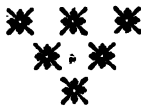
The Duty of Corporations is to answer the Ends of their Institution.

7.

To enforce this Duty, all Corporations may be VISITED : Spiritual Corporations by the Ordinary ; Lay Corporations by the Founder, or his Representatives ; viz. the civil by the King (who is the *Fundator incipiens* of all) represented in his Court of King's Bench ; the eleemosynary by the Endower (who is the *Fundator perficiens* of such) or by his Heirs or Assigns.

8.

Corporations may be dissolved, 1. By Act of Parliament. 2. By the natural Death of all their Members. 3. By Surrender of their Franchises. 4. By Forfeiture of their Charter.



BOOK THE SECOND.

*Of the RIGHTS of THINGS.*

CHAPTER I.

*Of PROPERTY, in general.*

I.

**A**LL DOMINION over external Objects has it's Original from the Gift of the Creator to Man in general.

2.

The SUBSTANCE of Things was, at first, common to all Mankind; yet a temporary Property, in the USE of them, might even then be acquired, and continued, by OCCUPANCY.

3.

In Process of Time a permanent Property was established in the SUBSTANCE, as well as the USE, of Things; which was also originally acquired by OCCUPANCY only.

4.

Left this Property should determine by the Owner's Dereliction, or Death, whereby the Thing would again become common, Societies have established

blished CONVEYANCES, WILLS, and HEIRSHIPS, in order to continue the Property of the first Occupant: And, where by Accident such Property becomes discontinued or unknown, the Thing usually reverts to the SOVEREIGN of the State, by virtue of the municipal Law.

5.

But of some Things, which are incapable of permanent substantial Dominion, there still subsists only the same transient usufructuary Property, which originally subsisted in all Things.

## C H A P. II.

### *Of real PROPERTY; and, first, of CORPOREAL HEREDITAMENTS.*

I.

**I**N this PROPERTY, or exclusive Dominion, consist the RIGHTS of THINGS; which are,  
1. Things REAL. 2. Things PERSONAL.

2.

In Things REAL may be considered, 1. Their several KINDS. 2. The TENURES, by which they may be holden. 3. The ESTATES, which may be acquired therein. 4. Their TITLE, or the Means of acquiring and losing them.

C 2

3. All



3.

All the several KINDS of Things real are reducible to one of these three, viz. LANDS, TENEMENTS, or HEREDITAMENTS; whereof the second includes the first, and the third includes the first and second.

4.

HEREDITAMENTS therefore, or whatever may come to be inherited, (being the most comprehensive Denomination of Things real,) are either CORPOREAL OR INCORPOREAL.

5.

CORPOREAL Hereditaments consist wholly of LANDS, in their largest legal Sense; wherein they include not only the Face of the Earth, but every other Object of Sense adjoining thereto, and subsisting either above or beneath it.

### C H A P. III.

#### *Of* INCORPOREAL *Hereditaments.*

1.

INCORPOREAL Hereditaments are Rights issuing out of Things corporeal, or concerning, or annexed to, or exercisable within, the same.

2.

Incorporeal Hereditaments are, 1. ADVOWSONS.  
2. TITHES. 3. COMMONS. 4. WAYS. 5. OFFICES.

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CES. 6. DIGNITIES. 7. FRANCHISES. 8. CORQU-  
DIES OR PENSIONS. 9. ANNUITIES. 10. RENTS.

3.

AN ADVOWSON is a Right of Presentation to an ecclesiastical Benefice; either appendant, or in gross. This may be, 1. Presentative. 2. Collative. 3. Donative.

4.

TITHES are the tenth Part of the Increase yearly arising from the Profits and Stock of Lands, and the personal Industry of Mankind. These, by the antient and positive Law of the Land, are due of common Right to the Parson, or (by Endowment) to the Vicar; unless specially discharged, 1. By real Composition. 2. By Prescription, either *de Modo decimandi*, or *de non decimando*.

5.

COMMON is a Profit which a Man hath in the Lands of another; being, 1. Common of Pasture; which is either appendant, appurtenant, because of Vicinage, or in gross. 2. Common of Piscary. 3. Common of Turbary. 4. Common of Estovers, or Botes.

6.

WAYS are a Right of passing over another Man's Ground.

7.

OFFICES are the Right to exercise a public, or private, Employment,

8.

For DIGNITIES, which are Titles of Honour, see Book I. Ch. 12.

9.

FRANCHISES are a royal Privilege, or Branch of the King's Prerogative, subsisting in the Hands of a Subject.

10.

CORODIES are Allotments for one's Sustenance ; which may be converted into PENSIONS. (See Book I. Ch. 8.)

11.

AN ANNUITY is a yearly Sum of Money, charged upon the Person, and not upon the Lands, of the Grantor.

12.

RENTS are a certain Profit issuing yearly out of Lands and Tenements ; and are reducible to,  
1. Rent-service. 2. Rent-charge. 3. Rent-seck.

#### C H A P. IV.

##### *Of the* FEODAL SYSTEM.

1.

THE Doctrine of TENURES is derived from the FEODAL Law ; which was planted in EUROPE by it's northern Conquerors, at the Dissolution of the ROMAN Empire.

2. Pure

2.

Pure and PROPER FEUDS were Parcels of Land, allotted by a Chief to his Followers; to be held on the Condition of personally rendering due military Service to their Lord.

3.

These were granted by Investiture; were held under the Bond of Fealty; were inheritable only by Descendants; and could not be transferred without the mutual Consent of the Lord and Vassal.

4.

IMPROPER FEUDS were derived from the other; but differed from them in their Original, their Services and Renders, their Descent, and other Circumstances.

5.

The Lands of ENGLAND were converted into FEUDS, of the improper Kind, soon after the NORMAN Conquest: Which gave Rise to the grand Maxim of Tenure; viz. That all Lands in the Kingdom are HOLDEN, mediately or immediately, of the King.

## C H A P. V.

*Of the antient* ENGLISH TENURES.

## I.

**T**HE Distinction of Tenures consisted in the Nature of their Services: As, 1. CHIVALRY, or KNIGHT-SERVICE; where the Service was free, but uncertain. 2. FREE SOCAGE; where the Service was free, and certain. 3. Pure VILLENAGE; where the Service was base, and uncertain. 4. PRIVILEGED VILLENAGE, or VILLEIN SOCAGE; where the Service was base, but certain.

## 2.

The most universal antient Tenure was that in CHIVALRY, or by KNIGHT-SERVICE; in which the Tenant of every Knight's Fee was bound, if called upon, to attend his Lord to the Wars. This was granted by Livery, and perfected by Homage and Fealty; which usually drew after them Suit of Court.

## 3.

The other Fruits and Consequences of the Tenure by Knight-Service were, 1. Aid. 2. Relief. 3. Primer Seisin. 4. Wardship. 5. Marriage. 6. Fines upon Alienation. 7. Escheat.

## 4.

GRAND SERJEANTY differed from Chivalry principally in it's Render, or Service; and not in it's Fruits and Consequences.

5. The

5.

The personal Service in Chivalry was at length gradually changed into pecuniary Assessments, which were called SCUTAGE or ESCUAGE.

6.

These military Tenures (except the Services of grand Serjeanty) were, at the Restoration of King CHARLES, totally abolished, and reduced to free Socage, by Act of Parliament.

## CHAP. VI.

### *Of the MODERN ENGLISH TENURES.*

1.

**F**REE SOCAGE is a Tenure by any free, certain, and determinate Service.

2.

This Tenure, the Relic of SAXON Liberty, includes PETIT SERJEANTY, Tenure in BURGAGE, and GAVELKIND.

3.

Free Socage Lands partake strongly of the feudal Nature, as well as those in Chivalry: Being holden; subject to some Service, — at the least, to Fealty and Suit of Court; subject to Relief, to Wardship, and to Escheat, but not to Marriage; subject also formerly to Aids, primer Seisin, and Fines for Alienation,

4. PURE

4.

PURE VILLENAGE was a precarious and slavish Tenure, at the absolute Will of the Lord, upon uncertain Services of the basest Nature.

5.

From hence, by tacit Consent or Encroachment, have arisen the modern COPYHOLDS, or Tenure by Copy of Court Roll; in which Lands may be still held at the (nominal) Will of the Lord, (but regulated) according to the Custom of the Manor.

6.

These are subject, like Socage Lands, to Services, Relief, and Escheat; and also to Heriots, Wardship, and Fines upon Descent and Alienation.

7.

PRIVILEGED VILLENAGE, or VILLEIN SOCAGE, is an exalted Species of copyhold Tenure, upon base, but certain, Services; subsisting only in the antient Demesnes of the Crown; whence the Tenure is denominated the Tenure in ANTIENT DEMESNE.

8.

These Copyholds, of antient Demesne, have divers Immunities annexed to their Tenure; but are still held by Copy of Court Roll, according to the Custom of the Manor, though not at the Will of the Lord.

9.

FRANKALMOIGN is a Tenure by spiritual Services at large; whereby many ecclesiastical and eleemosynary Corporations now hold their Lands and Tenements: Being of a Nature distinct from Tenure by divine Service in certain.

C H A P.

C H A P. VII.

*Of* FREEHOLD ESTATES *of* INHERITANCE.

1.

**E**STATES in Lands, Tenements, and Hereditaments, are such Interest as the Tenant hath therein ; to ascertain which, may be considered ;  
1. The QUANTITY of INTEREST. 2. The TIME of ENJOYMENT. 3. The NUMBER and CONNEXIONS of the TENANTS.

2.

Estates, with respect to their QUANTITY of INTEREST, or Duration, are either FREEHOLD, or LESS than FREEHOLD.

3.

A FREEHOLD Estate, in Lands, is such as is created by Livery of Seisin at common Law ; or, in Tenements of an incorporeal Nature, by what is equivalent thereto.

4.

Freehold Estates are either Estates of INHERITANCE, or NOT of INHERITANCE, viz. for LIFE only : And INHERITANCES are, 1. ABSOLUTE, OF FEE SIMPLE. 2. LIMITED FEES.

5.

Tenant in FEE SIMPLE is he that hath Lands, Tenements, or Hereditaments, to hold to him and his Heirs for ever.

6. LIMITED



6.

LIMITED FEES are, 1. QUALIFIED, or BASE, Fees. 2. Fees CONDITIONAL at the common Law.

7.

QUALIFIED, or BASE, Fees are those which, having a Qualification subjoined thereto, are liable to be defeated when that Qualification is at an end.

8.

CONDITIONAL Fees, at the common Law, were such as were granted to the Donee, and the Heirs of his Body, in exclusion of collateral Heirs.

9.

These were held to be Fees, granted on Condition that the Donee had Issue of his Body; which Condition being once performed by the Birth of Issue, the Donee might immediately aliene the Land: But, the Statute *de Donis* being made to prevent such Alienation, thereupon from the Division of the Fee (by Construction of this Statute) into a particular Estate and a Reversion, the conditional Fees began to be called Fees-TAIL.

10.

All Tenements real, or favouring of the Realty, are subject to Entails.

11.

Estates tail may be, 1. general, or special; 2. male, or female; 3. given in frank Marriage.

12.

Incident to Estates tail are, 1. Waste. 2. Dower. 3. Curtesy. 4. Bar; — by Fine, Recovery, or lineal Warranty with Affets.

13. Estates

13.

Estates tail are now, by many Statutes and Resolutions of the Courts, almost brought back to the State of conditional Fees at the common Law.

## C H A P. VIII.

### *Of* FREEHOLDS, *NOT of* INHERITANCE.

1.

**F**REEHOLDS, NOT OF INHERITANCE, or for LIFE only, are, 1. CONVENTIONAL, or created by the Act of the Parties. 2. LEGAL, or created by Operation of Law.

2.

CONVENTIONAL Estates for LIFE are created by an exprefs Grant for Term of one's own Life, or *pur auter Vie*; or by a general Grant, without expressing any Term at all.

3.

Incident to this, and all other Estates for Life, are Estovers, and Emblements: And to Estates *pur auter Vie* general Occupancy was also incident; as special Occupancy still is, if *cestuy que Vie* survives the Tenant.

4.

LEGAL Estates for LIFE are, 1. Tenancy in TAIL, after POSSIBILITY of Issue EXTINGUISHED. 2. Tenancy by the CURTESY of ENGLAND. 3. Tenancy in DOWER.

5. Tenancy

5.

Tenancy in TAIL, after POSSIBILITY of Issue EXTINCT, is where an Estate is given in special Tail; and, before Issue had, a Person dies from whose Body the Issue was to spring; whereupon the Tenant (if surviving) becomes Tenant in TAIL, after POSSIBILITY of Issue EXTINCT.

6.

This Estate partakes both of the Incidents to an Estate tail, and those of an Estate for Life.

7.

Tenancy by the CURTESY of ENGLAND is where a Man's Wife is seised of an Estate of Inheritance; and he by her has Issue, born alive, which was capable of inheriting her Estate; in which case he shall, upon her Death, hold the Tenements for his own Life, as Tenant by the CURTESY.

8.

Tenancy in DOWER is where a Woman's Husband is seised of an Estate of Inheritance, of which her Issue might by any Possibility have been Heir; and the Husband dies; the Woman is hereupon entitled to DOWER, or one third Part of the Lands and Tenements, to hold for her natural Life.

9.

Dower is either by the common Law; by special Custom; *ad Ostium Ecclesiae*; or, *ex Assensu Patris*.

10.

Dower may be forfeited, or barred; particularly by an Estate in JOINTURE.

C H A P. IX.

*Of Estates, LESS than FREEHOLD.*

I.

**E** States LESS than FREEHOLD are, 1. Estates for YEARS. 2. Estates at WILL. 3. Estates at SUFFERANCE.

2.

An Estate for YEARS is where a Man, seised of Lands and Tenements, letteth them to another for a certain Period of Time, which transfers the Interest of the Term; and the Lessee enters thereon, which gives him Possession of the Term, but not legal Seisin of the Land.

3.

Incident to this Estate are Estovers; and also Emblements, if it determines before the full End of the Term.

4.

An Estate at WILL is where Lands are let by one Man to another, to hold at the Will of both Parties; and the Lessee enters thereon.

5.

COPYHOLDS are Estates held at the Will of the Lord, (regulated) according to the Custom of the Manor.

6.

An Estate at SUFFERANCE is where one comes into Possession of Land by lawful Title, but keeps it afterwards without any Title at all.

C H A P.

## C H A P. X.

*Of Estates upon* CONDITION.

I.

**E**States (whether freehold or otherwise) may also be held upon **CONDITION**; in which case their Existence depends on the Happening, or Not Happening, of some uncertain Event.

2.

These Estates are, 1. On Condition **IMPLIED**.  
 2. On Condition **EXPRESSED**. 3. Estates in **GAGE**.  
 4. Estates by **STATUTE**, merchant or staple.  
 5. Estates by **ELEGIT**.

3.

Estates on Condition **IMPLIED** are where a Grant of an Estate has, from it's Essence and Constitution, a Condition inseparably annexed to it; though none be expressed in Words.

4.

Estates on Condition **EXPRESSED** are where an express Qualification or Provision is annexed to the Grant of an Estate.

5.

On the Performance of these Conditions either expressed or implied (if **PRECEDENT**) the Estate may be vested or enlarged: or, on the Breach of them (if **SUBSEQUENT**) an Estate already vested may be defeated.

6. Estates

6.

Eftates in GAGE, *in Vadio*, or in Pledge, are Eftates granted as a Security for Money lent; being  
1. *In vivo Vadio*, or LIVING GAGE; where the Profits of Land are granted till a Debt be paid, upon which Payment the Grantor's Estate will revive. 2. *In mortuo Vadio*, in DEAD, or MORT GAGE; where an Estate is granted, on Condition to be void at a Day certain, if the Grantor then repays the Money borrowed; on Failure of which, the Estate becomes absolutely dead to the Grantor.

7.

Eftates by STATUTE merchant, or STATUTE staple, are alfo Eftates conveyed to Creditors, in purfuanee of certain Statutes, till their Profits fhall difcharge the Debt.

8.

Eftates by ELEGIT are where, in confequence of a judicial Writ fo called, Lands are delivered by the Sheriff to a Plaintiff, till their Profits fhall fatisfy a Debt adjudged to be due by Law.

## CHAP. XI.

*Of Estates in Possession, Remainder, and  
Reversion.*

1.

**E**States, with respect to their TIME of ENJOYMENT, are either in immediate POSSESSION, or in EXPECTANCY: Which Estates in EXPECTANCY are created at the same TIME, and are Parcel of the same Estates, as those upon which they are expectant. These are, 1. REMAINDERS. 2. REVERSIONS.

2.

A REMAINDER is an Estate limited to take Effect, and be enjoyed, after another PARTICULAR Estate is determined.

3.

Therefore, 1. There must be a precedent particular Estate, in order to support a Remainder. 2. The Remainder must pass out of the Grantor, at the Creation of the particular Estate. 3. The Remainder must vest in the Grantee, during the Continuance, or at the Determination, of the particular Estate.

4. Re-

4.

Remainders are, 1. Vested; where the Estate is fixed to remain to a CERTAIN Person, after the Particular Estate is spent. 2. Contingent; where the Estate is limited to take Effect, either to an UNCERTAIN Person, or upon an UNCERTAIN Event.

5.

AN EXECUTORY DEVISE is such a Disposition of Lands, by Will, that an Estate shall not vest thereby at the Death of the Devisor, but only upon some future Contingency; and without any precedent particular Estate to support it.

6.

A REVERSION is the Residue of an Estate left in the Grantor, to commence in Possession after the Determination of some PARTICULAR Estate granted: To which are incident Fealty, and Rent.

7.

Where two Estates, the one less, the other greater, the one in Possession, the other in Expectancy, meet together in one and the same Person, and in one and the same Right, the less is MERGED in the greater.



## C H A P. XII.

*Of Estates, in SEVERALTY, JOINT-TENANCY,  
COPARCENARY, and COMMON.*

I.

**E** States, with respect to the NUMBER and CONNECTIONS of their TENANTS, may be held,  
1. In SEVERALTY. 2. In JOINT-TENANCY. 3. In COPARCENARY. 4. In COMMON.

2.

An Estate in SEVERALTY is where one Tenant holds it in his own sole Right, without any other Person being joined with him.

3.

An Estate in JOINT-TENANCY is where an Estate is granted to two or more Persons; in which Case the Law construes them to be JOINT-TENANTS, unless the Words of the Grant expressly exclude such Construction.

4.

Joint-tenants have an Unity of Interest, of Title, of Time, and of Possession: They are seized *per my & per tout*: and therefore upon the Decease of one Joint-tenant, the whole Interest remains to the Survivor.

5.

Joint-tenancy may be dissolved, by destroying one of it's four constituent Unities.

6. An

6.

An Estate in COPARCENARY is where an Estate of Inheritance descends from the Ancestor to two or more Persons; who are called PARCENERS, and all together make but one Heir.

7.

Parceners have an Unity of Interest, Title, and Possession; but are only seised *per my*, and not *per tout*: Wherefore there is no Survivorship among Parceners.

8.

Incident to this Estate is the Law of HOTCHPOT.

9.

Coparcenary may also be dissolved, by destroying any of it's three constituent Unities.

10.

An Estate in COMMON is where two or more Persons hold Lands, possibly by distinct Titles, and for distinct Interests; but by Unity of Possession, because none knoweth his own Severalty.

11.

Tenants in common have therefore an Unity of Possession, (without Survivorship; being seised *per my*, and not *per tout*;) but no necessary Unity of Title, Time, or Interest.

12.

This Estate may be created, 1. by dissolving the constituent Unities of the two former; 2. by express Limitation in a Grant: And may be destroyed, 1. by uniting the several Titles in one Tenant; 2. by Partition of the Land.

## CHAP. XIII.

*Of the TITLE to Things real, in general.*

I.

**A** TITLE to Things real is the Means whereby a Man cometh to the just Possession of his Property.

2.

Herein may be considered, 1. A mere or naked Possession. 2. The Right of Possession; which is, 1st, an apparent, 2dly, an actual, Right. 3. The mere Right of Property. 4. The Conjunction of actual Possession with both these Rights; which constitutes a perfect TITLE.

## CHAP. XIV.

*Of TITLE by DESCENT.*

I.

**T**HE TITLE to Things real may be reciprocally acquired or lost, 1. By DESCENT. 2. By PURCHASE.

2.

DESCENT is the Means whereby a Man, on the Death of his Ancestor, acquires a Title to his Estate, in right of Representation, as his HEIR at Law.

3. To

3.

To understand the Doctrine of Descents, we must form a clear Notion of CONSANGUINITY; which is the Connexion, or Relation, of Persons descended from the same Stock or common Ancestor; and it is, 1. LINEAL, where one of the Kinsmen is lineally descended from the other. 2. COLLATERAL, where they are lineally descended, not one from the other, but both from the same common Ancestor<sup>a</sup>.

4.

The Rules of Descent, or CANONS of INHERITANCE, observed by the LAWS of ENGLAND, are these<sup>b</sup>;

I.

Inheritances shall lineally DESCEND, to the ISSUE of the Person last actually seised, *in infinitum*; but shall never lineally ASCEND.

II.

The MALE Issue shall be admitted before the FEMALE.

III.

Where there are two or more Males in equal Degree, the ELDEST only shall inherit; but the Females ALL together.

IV.

The lineal Descendants, *in infinitum*, of any Person deceased shall REPRESENT their Ancestor; that is, shall stand in the same Place as the Person himself would have done, had he been living.

<sup>a</sup> See APPENDIX, No. I.

<sup>b</sup> See APPENDIX, No. II.

## V.

On Failure of LINEAL Descendants, or Issue, of the Person last seized, the Inheritance shall descend to the blood of the FIRST PURCHASOR; subject to the three preceding Rules. — To evidence which Blood, the two following Rules are established.

## VI.

The collateral Heir of the Person last seized must be his next collateral Kinsman, of the WHOLE Blood.

## VII.

In collateral Inheritances, the MALE STOCKS shall be preferred to the FEMALE; that is, Kindred derived from the Blood of the male Ancestors shall be admitted before those from the Blood of the female: Unless where the Lands have, in fact, descended from a Female.

CHAP. XV.

Of TITLE *by* PURCHASE, and *first*  
*by* ESCHEAT.

1.

**P**URCHASE, or Perquisition, is the Possession of an Estate which a Man hath by his own Act or Agreement; and not by the mere Act of Law, or Descent from any of his Ancestors. This includes, 1. ESCHEAT. 2. OCCUPANCY. 3. PRESCRIPTION. 4. FORFEITURE. 5. ALIENATION.

2.

ESCHEAT is where, upon Deficiency of the Tenant's INHERITABLE BLOOD, the Estate falls to the Lord of the Fee.

3.

INHERITABLE BLOOD is wanting to, 1. Such as are not related to the Person last seized. 2. His maternal Relations in paternal Inheritances, and *vice versa*. 3. His Kindred of the half Blood. 4. Monsters. 5. Bastards. 6. Aliens, and their Issue. 7. Persons attainted of Treason or Felony. 8. Papists, in respect of themselves only, by the statute Law.

CHAP.

## CHAP. XVI.

## Of TITLE by OCCUPANCY.

I.

**O**CCUPANCY is the taking Possession of those Things, which before had no Owner.

2.

Thus, at the common Law, where Tenant *pur auter vie* died during the Life of *cestuy que vie*, he, who could first enter, might lawfully retain the Possession; unless by the original Grant the Heir was made a SPECIAL Occupant.

3.

The Law of DERELICTIONS and ALLUVIONS has narrowed the Title by Occupancy.

## CHAP. XVII.

## Of TITLE by PRESCRIPTION.

I.

**P**RESCRIPTION (as distinguished from CUSTOM) is a PERSONAL immemorial Usage of enjoying a Right in some incorporeal Hereditament, by a Man, and either his Ancestors or those whose Estate of Inheritance he hath: Of which the first is called prescribing in his Ancestors, the latter in a *que Estate*.

CHAP.

CHAP. XVIII.

*Of TITLE by FORFEITURE.*

1.

**F**ORFEITURE is a Punishment annexed by Law to some illegal Act, or Negligence, in the Owner of Things real; whereby the Estate is transferred to another, who is usually the Party injured.

2.

Forfeitures are occasioned, 1. By CRIMES. 2. By ALIENATION, contrary to Law. 3. By LAPSE. 4. By SIMONY. 5. By NONPERFORMANCE OF CONDITIONS. 6. By WASTE. 7. By BREACH of COPYHOLD CUSTOMS. 8. By BANKRUPTCY.

3.

Forfeitures for CRIMES, or Misdemeanors, are for, 1. Treason. 2. Felony. 3. Misprision of Treason. 4. *Præmunire*. 5. Assaults on a Judge, and Batteries, sitting the Courts. 6. Popish Recusancy, &c.

4.

ALIENATIONS, or Conveyances, which induce a Forfeiture, are, 1. Those in Mortmain, made to Corporations contrary to the statute Law. 2. Those made to Aliens. 3. Those made by particular Tenants, when larger than their Estates will warrant.

5.

LAPSE is a Forfeiture of the Right of Presentation to a vacant Church, by Neglect of the Patron to present within six calendar Months.

6. SIMONY



6.

**SIMONY** is the corrupt Presentation of any one to an ecclesiastical Benefice, whereby that Turn becomes forfeited to the Crown.

7.

For Forfeiture by **NONPERFORMANCE of CONDITIONS**, see Ch. 10.

8.

**WASTE** is a Spoil, or Destruction, in any corporeal Hereditaments, to the Prejudice of him that hath the Inheritance.

9.

**COPYHOLD** Estates may have also other peculiar Causes of Forfeiture, according to the Custom of the Manor.

10.

**BANKRUPTCY** is the Act of becoming a **BANKRUPT**; that is, a Trader who secretes himself, or does certain other Acts, tending to defraud his Creditors. (See Ch. 22.)

11.

By Bankruptcy all the Estates of the Bankrupt are transferred to the Assignees of his Commissioners, to be sold for the Benefit of his Creditors.

CHAP. XIX.

*Of TITLE by ALIENATION.*

I.

**A** LIENATION, Conveyance, or Purchase in it's more limited Sense, is a Means of transferring real Estates, wherein they are voluntarily resigned by one Man, and accepted by another.

2.

This formerly could not be done by a Tenant, without LICENCE from his Lord; nor by a Lord, without ATTORNMENT of his Tenant.

3.

All Persons are CAPABLE of purchasing; and all, that are in Possession of any Estates, are CAPABLE of conveying them: — Unless under peculiar Disabilities by Law; as being attainted, *non compotes*, Infants, under Durefs, Feme-coverts, Aliens, or Papists.

4.

Alienations are made by COMMON ASSURANCES; which are, 1. By DEED, or Matter in *Pais*. 2. By Matter of RECORD. 3. By special CUSTOM. 4. By DEVISE,

CHAP. XX.

*Of ALIENATION by DEED.*

I.

**I**N Assurances by DEED may be considered, 1. It's GENERAL NATURE. 2. It's SEVERAL SPECIES.

2.

A Deed, in GENERAL, is the solemn Act of the Parties; being, usually, a Writing sealed and delivered; and it may be, 1. A Deed indented, or Indenture. 2. A Deed poll.

3.

The REQUISITES of a Deed are, 1. Sufficient PARTIES, and proper SUBJECT-MATTER. 2. A good and sufficient CONSIDERATION. 3. WRITING on Paper, or Parchment, duly stamped. 4. Legal and orderly PARTS<sup>c</sup>, (which are usually, 1st, the Premises; 2dly, the *Habendum*; 3dly, the *Tenendum*; 4thly, the *Reddendum*; 5thly, the Conditions; 6thly, the Warranty (which is either lineal or collateral;) 7thly, the Covenants; 8thly, the Conclusion, which includes the Date.) 5. READING it, if desired. 6. SEALING, and, in many cases, SIGNING it also. 7. DELIVERY. 8. ATTESTATION.

4.

A Deed may be AVOIDED, 1. By the Want of any of the Requisites before-mentioned. 2. By

<sup>c</sup> See APPENDIX, No. III. and No. IV.

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subsequent Matter ; as, 1st, Rasure, or Alteration. 2dly, Defacing it's Seal. 3dly, Cancelling it. 4thly, Disagreement of those, whose Consent is necessary. 5thly, Judgment of a Court of Justice.

5.

Of the several SPECIES of Deeds, some serve to CONVEY real Property, some only to CHARGE and DISCHARGE it.

6.

Deeds which serve to CONVEY real Property, or CONVEYANCES, are either by COMMON LAW, or by STATUTE. And, of Conveyances by common LAW, some are ORIGINAL or primary, others DERIVATIVE or secondary.

— 7.

ORIGINAL Conveyances are, 1. FEOFFMENTS. 2. GIFTS. 3. GRANTS. 4. LEASES. 5. EXCHANGES. 6. PARTITIONS.—DERIVATIVE are, 7. RELEASES. 8. CONFIRMATIONS. 9. SURRENDERS, 10. ASSIGNMENTS. 11. DEFEAZANCES.

8.

A FEOFFMENT<sup>d</sup> is the Transfer of any CORPOREAL Hereditament to another, perfected by LIVERY of SEISIN, or Delivery of bodily Possession from the Feoffor to the Feoffee ; without which no freehold Estate therein can be created at common Law.

9.

A GIFT is properly the Conveyance of Lands in Tail.

<sup>d</sup> See APPENDIX, No. III.

**10. A GRANT**

10.

A GRANT is the regular Method, by common Law, of conveying INCORPOREAL Hereditaments.

11.

A LEASE is the Demise, Granting, or Letting to Farm of any Tenement, usually for a less Term than the Lessor hath therein; yet sometimes possibly for a greater; according to the Regulations of the restraining and enabling Statutes.

12.

AN EXCHANGE is the mutual Conveyance of equal Interests, the one in Consideration of the other.

13.

A PARTITION is the Division of an Estate held in Joint-tenancy, in Coparcenary, or in common, between the respective Tenants; so that each may hold his distinct Part in Severalty.

14.

A RELEASE is the Discharge or Conveyance of a Man's Right, in Lands and Tenements, to another that hath some former Estate in Possession therein.

15.

A CONFIRMATION is the Conveyance of an Estate or Right *in esse*, whereby a voidable Estate is made sure, or a particular Estate is encreased.

16.

A SURRENDER is the Yielding up of an Estate for Life, or Years, to him that hath the immediate Remainder or Reversion; wherein the particular Estate may merge.

17. An

17.

AN ASSIGNMENT is the Transfer, or Making over to another, of the whole Right one has in any Estate; but usually in a Lease, for Life or Years.

18.

A DEFEAZANCE is a collateral Deed, made at the same time with the original Conveyance; containing some Condition, upon which the Estate may be defeated.

19.

Conveyances by STATUTE depend much on the Doctrine of USES and TRUSTS: Which are a Confidence reposed in the *Terre-Tenant*, or Tenant of the Land, that he shall permit the Profits to be enjoyed, according to the Directions of *cestuy que Use*, or *cestuy que Trust*.

20.

The Statute of Uses, having transferred all Uses into actual Possession, (or, rather, having drawn the Possession to the Use) has given Birth to divers other Species of Conveyance: 1. A COVENANT to stand seised to USES. 2. A BARGAIN and SALE, enrolled. 3. A LEASE and RELEASE\*. 4. A Deed to LEAD or DECLARE the Use of other more direct Conveyances. 5. A REVOCATION of USES; being the Execution of a Power, reserved at the Creation of the Use, of recalling at a future time the Use or Estate so creating. All which owe their present Operation principally to the Statute of Uses.

\* See APPENDIX, No. IV.

## 21.

Deeds which do not CONVEY, but only CHARGE real Property, and DISCHARGE it, are, 1. OBLIGATIONS <sup>f</sup>. 2. RECOGNIZANCES. 3. DEFEAZANCES upon both.

## C H A P. XXI.

*Of ALIENATION by Matter of RECORD.*

## I.

**A**SSURANCES by Matter of RECORD are where the Sanction of some Court of Record is called in, to substantiate and witness the Transfer of real Property. These are, 1. PRIVATE ACTS of PARLIAMENT. 2. The KING's GRANTS. 3. FINES. 4. Common RECOVERIES.

## 2.

PRIVATE ACTS of PARLIAMENT are a Species of Assurances, calculated to give (by the transcendent Authority of Parliament) such reasonable Powers or Relief, as are beyond the Reach of the ordinary Course of Law.

## 3.

The KING's GRANTS, contained in Charters or Letters patent, are all entered on Record, for the Dignity of the royal Person, and Security of the royal Revenue.

<sup>f</sup> See APPENDIX, No. V.

## 4. A FINE

4.

A FINE<sup>s</sup> (sometimes said to be a Feoffment of Record) is an amicable Composition and Agreement of an actual, or fictitious, Suit; whereby the Estate in question is acknowledged to be the Right of one of the Parties.

5.

The PARTS of a Fine are, 1. The Writ of Covenant. 2. The Licence to agree. 3. The Concord. 4. The Note. 5. The Foot. To which the Statute hath added, 6. Proclamations.

6.

Fines are of four KINDS: 1. *Sur Cognizance de Droit, come ceo que il ad de son Done.* 2. *Sur Cognizance de Droit tantum.* 3. *Sur Concessit.* 4. *Sur Done, Grant, et Render*; which is a double Fine.

7.

The FORCE and EFFECT of Fines (when levied by such as have themselves any Interest in the Estate) are to assure the Lands in question to the Cognizee, by barring the respective Rights of Parties, Privies, and Strangers.

8.

A common RECOVERY<sup>b</sup> is by an actual, or fictitious, Suit or Action for Land, brought against the Tenant of the Freehold; who thereupon vouches another, who undertakes to warrant the Tenant's Title: But, upon such Vouchee's making Default, the Land is RECOVERED by Judgment at Law against the Tenant; who, in return, obtains Judgment

<sup>s</sup> See APPENDIX, No. VI.

<sup>b</sup> See APPENDIX, No. VII.



ment against the Vouchee to recover Lands of equal Value in Recompense.

9.

The FORCE and EFFECT of a Recovery are to assure Lands to the Recoveror, by barring Estates tail, and all Remainders and Reversions expectant thereon; provided the Tenant in Tail either suffers, or is vouched in, such Recovery.

10.

The USES of a Fine or Recovery may be directed by, 1. Deeds to LEAD such Uses; which are made previous to the Levying or Suffering them. 2. Deeds to DECLARE the Uses; which are made subsequent.

## CHAP. XXII.

### *Of ALIENATION by special CUSTOM.*

1.

**A**SSURANCES by special CUSTOM are confined to the Transfer of COPYHOLD Estates.

2.

This is effected by, 1. SURRENDER by the Tenant into the Hands of the Lord to the Use of another, according to the Custom of the Manor. 2. PRESENTMENT, by the Tenants or Homage, of such Surrender. 3. ADMITTANCE of the Surrenderee by the Lord, according to the Uses expressed in such Surrender.

3. ADMIT-

3.

ADMITTANCE may also be had upon original GRANTS to the Tenant from the Lord, and upon DESCENTS to the Heir from the Ancestor.

### C H A P. XXIII.

#### *Of ALIENATION by DEVISE.*

1.

**D**EVISE is a Disposition of Lands and Tenements, contained in the last Will and Testament of the Owner.

2.

This was not permitted by the common Law, as it stood since the Conquest; but was introduced by the statute Law, under Henry VIII; since made more universal by the Statute of Tenures under Charles II, with the Introduction of additional Solemnities by the Statute of Frauds and Perjuries in the same Reign.

3.

The CONSTRUCTION of all COMMON ASSURANCES should be, 1. Agreeable to the Intention, 2. — to the Words, of the Parties. 3. Made upon the intire Deed. 4. Bearing strongest against the Contractor. 5. Conformable to Law. 6. Rejecting the latter of two totally repugnant Clauses in a Deed, and the former in a Will. 7. Most favourable in case of a Devise.

C H A P. XXIV.

*Of* THINGS PERSONAL.

1.

THINGS PERSONAL are comprehended under the general Name of CHATTELS; which include whatever wants either the Duration, or the Immobility, attending Things real.

2.

In these are to be considered, 1. Their DISTRIBUTION. 2. The PROPERTY of them. 3. The TITLE to that Property.

3.

As to the DISTRIBUTION of Chattels, they are, 1. Chattels REAL. 2. Chattels PERSONAL.

4.

Chattels REAL are such Quantities of Interest, in Things IMMOVEABLE, as are short of the Duration of Freeholds; being limited to a Time certain, beyond which they cannot subsist. (See Ch. 7.)

5.

Chattels PERSONAL are Things MOVEABLE; which may be transferred from Place to Place, together with the Person of the Owner.

C H A P.

C H A P. XXV.

*Of* PROPERTY *in* THINGS PERSONAL.

I.

**P**ROPERTY, in Chattels personal, is either in POSSESSION, or in ACTION.

2.

Property in POSSESSION, where a Man has the actual Enjoyment of the Thing, is, 1. ABSOLUTE.

2. QUALIFIED.

3.

ABSOLUTE Property is where a Man has such an exclusive Right in the Thing, that it cannot cease to be his, without his own Act or Default.

4.

QUALIFIED Property is such as is not, in it's Nature, permanent; but may sometimes subsist, and at other times not subsist.

5.

This may arise, 1. Where the Subject is incapable of absolute Ownership. 2. From the peculiar Circumstances of the Owners.

6.

Property in ACTION, is where a Man hath not the actual OCCUPATION of the Thing; but only a RIGHT to it, arising upon some Contract, and recoverable by an Action at Law.

7. The

7.

The Property of Chattels personal is liable to Remainders, expectant on Estates for Life ; to Joint-tenancy ; and to Tenancy in common.

## C H A P. XXVI.

*Of TITLE to Things personal by OCCUPANCY.*

I.

**T**HE TITLE to Things personal may be acquired or lost by, 1. OCCUPANCY. 2. PREROGATIVE. 3. FORFEITURE. 4. CUSTOM. 5. SUCCESSION. 6. MARRIAGE. 7. JUDGMENT. 8. GIFT, OR GRANT. 9. CONTRACT. 10. BANKRUPTCY. 11. TESTAMENT. 12. ADMINISTRATION.

2.

OCCUPANCY still gives the first Occupant a Right to those few Things, which have no legal Owner, or which are incapable of permanent Ownership. Such as, 1. Goods of Alien Enemies. 2. Things found. 3. The Benefit of the Elements. 4. Animals *ferae Naturae*. 5. Emblements. 6. Things gained by Accession ; — or, 7. By Confusion. 8. Literary Property.

C H A P.

C H A P. XXVII.

*Of TITLE by PREROGATIVE, and FORFEITURE.*

1.

**B**Y PREROGATIVE is vested in the Crown, or it's Grantees, the Property of the royal Revenue ; (See Book I. Ch. 8.) and also the Property of all Game in the Kingdom, with the Right of pursuing and taking it.

2.

By FORFEITURE, for Crimes and Misdemeanors, the Right of Goods and Chattels may be transferred from one Man to another ; either in part or totally.

3.

Total Forfeitures of Goods arise from Conviction of, 1. Treason, and Misprision thereof. 2. Felony. 3. Excusable Homicide. 4. Outlawry for Treason or Felony. 5. Flight. 6. Standing mute. 7. Assaults on a Judge ; and Batteries, sitting the Courts. 8. *Praemunire*. 9. Pretended Prophecies. 10. Owling. 11. Residing abroad of Artificers. 12. Challenges to fight, for Debts at Play.

## C H A P. XXVIII.

*Of TITLE by CUSTOM.*

## I.

**B**Y CUSTOM, obtaining in particular Places, a Right may be acquired in Chattels : The most usual of which Customs are those relating to, 1. HERIOTS. 2. MORTUARIES. 3. HEIR-LOOMS.

## 2.

HERIOTS are either Heriot-SERVICE, which differs little from a Rent ; or Heriot-CUSTOM, which is a customary Tribute, of Goods and Chattels, payable to the Lord of the Fee on the Decease of the Owner of Lands.

## 3.

MORTUARIES are a customary Gift, due to the Minister in many Parishes, on the Death of his Parishioners.

## 4.

HEIR-LOOMS are such personal Chattels, as descend by special Custom to the Heir, along with the Inheritance of his Ancestor.

C H A P. XXIX.

Of TITLE *by* SUCCESSION, MARRIAGE,  
*and* JUDGMENT.

I.

**B**Y SUCCESSION the Right of Chattels is vested in Corporations AGGREGATE; and likewise in such Corporations SOLE, as are the Heads and Representatives of Bodies aggregate.

2.

By MARRIAGE the Chattels real and personal of the Wife are vested in the Husband, in the same Degree of Property, and with the same Powers, as the Wife when sole had over them; provided he reduces them to Possession.

3.

The Wife also acquires, by MARRIAGE, a Property in her *Paraphernalia*.

4.

By JUDGMENT, consequent on a Suit at Law, a Man may in some cases, not only RECOVER, but originally ACQUIRE, a Right to personal Property. As, 1. To Penalties recoverable by Action popular. 2. To Damages. 3. To Costs of Suit.



C H A P. XXX.

*Of* TITLE *by* GIFT, GRANT, *and* CONTRACT.

I.

**A** GIFT, or GRANT, is a voluntary Conveyance of a Chattel personal in Possession, without any Consideration or Equivalent.

2.

A CONTRACT is an Agreement, upon sufficient Consideration, to do or not to do a particular Thing: And, by such Contract, any personal Property (either in Possession, or in Action) may be transferred.

3.

Contracts may be either express, or implied; — either executed, or executory.

4.

The CONSIDERATION of Contracts is, 1. A good Consideration. 2. A valuable Consideration; which is, 1. *Do, ut des.* 2. *Facio, ut facias.* 3. *Facio, ut des.* 4. *Do, ut facias.*

5.

The most usual SPECIES of personal Contracts are, 1. SALE or EXCHANGE. 2. BAILMENT, 3. HIRING or BORROWING. 4. DEBT.

6.

SALE or EXCHANGE is a Transmutation of Property from one Man to another, in Consideration of some Recompense in Value.

7. BAIL-

7.

**BAILMENT** is the Delivery of Goods in Trust; upon a Contract, express or implied, that the Trust shall be faithfully performed by the Bailee.

8.

**HIRING** or **BORROWING** is a Contract, whereby the Possession of Chattels is transferred for a particular Time, on Condition that the identical Goods (or, sometimes, their Value) be restored at the Time appointed; together with (in case of **HIRING**) a Stipend or Price for the Use.

9.

This Price, being calculated to answer the Hazard, as well as Inconvenience, of Lending, gives Birth to the Doctrine of **INTEREST**, or **USURY**, upon Loans; and, consequently, to the Doctrine of **BOTTOMRY** or *Respondentia*, and **INSURANCE**.

10.

**DEBT** is any Contract, whereby a certain Sum of **MONEY** becomes due to the Creditor. This is,  
1. A Debt of **RECORD**. 2. A Debt upon **SPECIAL** Contract. 3. A Debt upon **SIMPLE** Contract; which last includes Paper Credit, or Bills of Exchange, and promissory Notes.

## CHAP. XXXI.

OF TITLE *by* BANKRUPTCY.

1.

**B**ANKRUPTCY (as defined in Ch. 18.) is the Act of becoming a Bankrupt.

2.

Herein may be considered, 1. WHO may become a Bankrupt. 2. The ACTS, whereby he may become a Bankrupt. 3. The PROCEEDINGS on a Commission of Bankrupt. 4. How his PROPERTY is transferred thereby.

3.

Persons, of full Age, USING the TRADE of Merchandize, by buying, and selling, and seeking their Livelyhood thereby, are liable to become Bankrupts; for Debts of a sufficient Amount.

4.

A Trader, who endeavours to avoid his Creditors, or evade their just Demands, by any of the Ways specified in the several Statutes of Bankruptcy, doth thereby commit an ACT of Bankruptcy.

5.

The PROCEEDINGS on a Commission of Bankrupt, so far as they affect the Bankrupt himself, are principally by, 1. Petition. 2. Commission. 3. Declaration of Bankruptcy. 4. Choice of Assignees. 5. The Bankrupt's Surrender. 6. His Examination. 7. His Discovery. 8. His Certificate. 9. His Allowance. 10. His Indemnity.

6. The

6.

The PROPERTY of a Bankrupt's personal Estate is, immediately upon the Act of Bankruptcy, vested by Construction of Law in the Assignees: And they, when they have collected, distribute the whole by equal Dividends among all the Creditors.

## C H A P. XXXII.

### *Of TITLE by TESTAMENT, and ADMINISTRATION.*

I.

Concerning TESTAMENTS and ADMINISTRATIONS, considered jointly, are to be observed,  
1. Their ORIGINAL and ANTIQUITY. 2. WHO may make a Testament. 3. It's NATURE and INCIDENTS. 4. What are EXECUTORS and ADMINISTRATORS. 5. Their OFFICE and DUTY.

2.

TESTAMENTS have subsisted in ENGLAND immemorially; whereby the Deceased was at Liberty to dispose of his personal Estate, reserving antiently to his Wife and Children their REASONABLE PART of his Effects.

3.

The Goods of INTESATES belonged antiently to the King; who granted them to the Prelates to be disposed in pious Uses: But, on their Abuse of this Trust in the times of Popery, the Legislature compelled them to delegate their Power to ADMINISTRATORS expressly provided by Law.

4. ALL

4.

ALL Persons may make a Testament, unless disabled by, 1. Want of Discretion. 2. Want of Freewill. 3. Criminal Conduct.

5.

TESTAMENTS are the legal Declaration of a Man's Intentions, which he wills to be performed after his Death. These are, 1. Written. 2. Nuncupative.

6.

AN EXECUTOR is he, to whom a Man by his Will commits the Execution thereof.

7.

ADMINISTRATORS are, 1. *Durante minore Aetate* of an infant Executor or Administrator; or *durante Absentia*; or *pendente Lite*. 2. *Cum Testamento annexo*; when no Executor is named, or the Executor refuses to act. 3. General Administrators; in pursuance of the Statutes of EDWARD III. and HENRY VIII. 4. Administrators *de Bonis non*; when a former Executor or Administrator dies without completing his Trust.

8.

THE OFFICE and DUTY of Executors, (and, in many points, of Administrators also,) are, 1. To bury the Deceased. 2. To prove the Will, or take out Administration. 3. To make an Inventory. 4. To Collect the Goods and Chattels. 5. To pay Debts; observing the Rules of Priority. 6. To pay Legacies, either general or specific; if they be vested, and not lapsed. 7. To distribute the undevise'd Surplus, according to the Statute of Distributions.

BOOK

BOOK THE THIRD.

*Of* PRIVATE WRONGS,

CHAPTER I.

*Of the* REDRESS of PRIVATE WRONGS, *by the*  
*mere* ACT of *the* PARTIES.

1.

WRONGS are the Privation of RIGHT; and are,  
1. PRIVATE. 2. PUBLIC.

2.

PRIVATE WRONGS, or CIVIL INJURIES, are an  
Infringement, or Privation, of the civil Rights of  
Individuals, considered as Individuals.

3.

The REDRESS of civil Injuries is one principal  
Object of the LAWS of ENGLAND.

4.

This REDRESS is effected, 1. By the mere ACT  
of the PARTIES. 2. By the mere OPERATION of  
LAW. 3. By BOTH together, or SUIT in COURTS.

5.

REDRESS, by the mere ACT of the PARTIES, is  
that which arises, 1. From the SOLE ACT of the  
Party injured. 2. From the JOINT ACT of all the  
Parties.

F

6. Of

6.

Of the first Sort are, 1. Defence of one's self, or Relations. 2. Recaption of Goods. 3. Entry on Lands and Tenements. 4. Abatement of Nuisances. 5. Distress; for Rent, for Suit or Service, for Amercements, for Damage, or for divers statutable Penalties;—made of such Things only as are legally distreinable;—and taken and disposed of according to the due Course of Law. 6. Seising of Heriots, &c.

7.

Of the second Sort are, 1. Accord. 2. Arbitration.

## CHAP. II.

### *Of REDRESS by the mere Operation of LAW.*

I.

**R**EDRESS, effected by the mere OPERATION of LAW, is, 1. In the case of RETAINER; where a Creditor is Executor or Administrator, and is thereupon allowed to retain his own Debt. 2. In the case of REMITTER; where one, who has a good Title to Lands, &c, comes into Possession by a BAD one, and is thereupon remitted to his antient good Title, which protects his ill-acquired Possession.

CHAP.

CHAP. III.

*Of COURTS in general.*

1.

**R**EDRESS, that is effected by the ACT both of  
Law and of the PARTIES, is by SUIT or AC-  
TION in the COURTS of Justice.

2.

Herein may be considered, 1. The COURTS them-  
selves. 2. The COGNIZANCE of Wrongs, or Inju-  
ries, therein. And, of COURTS, 1. Their NATURE  
and INCIDENTS. 2. Their several SPECIES.

3.

A COURT is a Place wherein Justice is judicially  
administered, by Officers delegated by the Crown:  
Being a Court either of Record, or not of Record.

4.

INCIDENT to all Courts are a Plaintiff, Defend-  
ant, and Judge: And, with us, there are also usu-  
ally Attorneys; and Advocates or Counsel, viz. ei-  
ther Barristers, or Serjeants at Law.



## CHAP. IV.

*Of the PUBLIC COURTS of COMMON LAW  
and EQUITY.*

## I.

COURTS of Justice, with regard to their several SPECIES, are, 1. Of a PUBLIC, or general, Jurisdiction throughout the Realm. 2. Of a PRIVATE, or special, Jurisdiction.

## 2.

PUBLIC Courts of Justice are, 1. The Courts of COMMON LAW and EQUITY. 2. The ECCLESIASTICAL Courts. 3. The MILITARY Courts. 4. The MARITIME Courts.

## 3.

The general and public Courts of COMMON LAW and EQUITY are, 1. The Court of Piepoudre. 2. The Court-Baron. 3. The Hundred Court. 4. The County Court. 5. The Court of common Pleas. 6. The Court of King's Bench. 7. The Court of Exchequer. 8. The Court of Chancery. (Which two last are Courts of EQUITY as well as LAW.) 9. The Courts of Exchequer-Chamber. 10. The House of Peers. To which may be added, as Auxiliaries, 11. The Courts of Assise and *Nisi prius*.

CHAP. V.

*Of Courts* ECCLESIASTICAL, MILITARY,  
*and* MARITIME.

I.

**E**CCLESIASTICAL Courts, (which were separated from the TEMPORAL by WILLIAM the Conqueror,) or Courts CHRISTIAN, are, 1. The Court of the Archdeacon. 2. The Court of the Bishop's Consistory, 3. The Court of Arches. 4. The Court of Peculiars. 5. The Prerogative Court. 6. The Court of Delegates. 7. The Court of Review.

2.

The only permanent MILITARY Court is that of Chivalry; the Courts martial, annually established by Act of Parliament, being only temporary.

3.

MARITIME Courts are, 1. The Court of Admiralty and Vice-admiralty. 2. The Court of Delegates. 3. The Lords of the Privy Council, and others, authorized by the King's Commission, for Appeals in Prize-Causes.

## CHAP. VI.

*Of Courts of a SPECIAL JURISDICTION.*

## I.

**C**OURTS of a special or private Jurisdiction are,  
 1. The Forest Courts ; including the Courts of Attachments, Regard, Sweinmote, and Justice-Seat. 2. The Court of Commissioners of Sewers. 3. The Court of Policies of Assurance. 4. The Court of the Marshalsea and the Palace Court. 5. The Courts of the Principality of WALES. 6. The Court of the Dutchy-Chamber of LANCASTER. 7. The Courts of the Counties palatine, and other royal Franchises. 8. The Stannary Courts. 9. The Courts of LONDON, and other Corporations : — To which may be referred the Courts of Requests, or Courts of Conscience ; and the modern Regulations of certain Courts Baron and County Courts. 10. The Courts of the two Universities.

CHAP. VII.

*Of the COGNIZANCE of private Wrongs.*

I.

**A**LL private Wrongs or civil Injuries are COGNIZABLE either in the Courts ECCLESIASTICAL, MILITARY, MARITIME, or those of COMMON LAW.

2.

Injuries cognizable in the ECCLESIASTICAL Courts are, 1. PECUNIARY. 2. MATRIMONIAL, 3. TESTAMENTARY.

3.

PECUNIARY Injuries, here cognizable, are, 1. SUBTRACTION of TITHES. For which the Remedy is by Suit to compel their Payment, or an Equivalent; and also their double Value. 2. NONPAYMENT of ecclesiastical DUES. Remedy: By Suit for Payment. 3. SPOLIATION. Remedy: By Suit for Restitution. 4. DILAPIDATIONS. Remedy: By Suit for Damages. 5. NON-REPAIR of the Church, &c; and NONPAYMENT of Church Rates. Remedy: By Suit to compel them.

4.

MATRIMONIAL Injuries are, 1. JACTITATION of MARRIAGE. Remedy: By Suit for perpetual Silence. 2. SUBTRACTION of CONJUGAL Rights. Remedy: By Suit for Restitution. 3. INHABILITY  
for

for the Marriage State. Remedy : By Suit for Divorce. 4. REFUSAL of decent MAINTENANCE to the Wife. Remedy : By Suit for Alimony.

5.

TESTAMENTARY Injuries are, 1. DISPUTING the Validity of WILLS. Remedy : By Suit to establish them. 2. OBSTRUCTING of ADMINISTRATIONS. Remedy : By Suit for the Granting them. 3. SUBTRACTION of LEGACIES. Remedy : By Suit for the Payment.

6.

The Courfe of Proceedings herein is much conformed to the civil and canon Law : But their only compulsive Procefs is that of Excommunication ; which is enforced by the temporal writ of *Significavit*, or *de Excommunicato capiendo*.

7.

Civil Injuries, cognizable in the Court MILITARY, or Court of Chivalry, are, 1. Injuries in point of HONOUR. Remedy : By Suit for honourable Amends. 2. ENCROACHMENTS in COAT-ARMOUR, &c. Remedy : By Suit to remove them. The Proceedings are in a fummary Method.

8.

Civil Injuries, cognizable in the Courts MARITIME, are Injuries, in their Nature of common Law Cognizance, but arising wholly upon the Sea, and not within the Precincts of any County. The Proceedings are herein also much conformed to the civil Law.

9. All

9.

All other Injuries are cognizable only in the Courts of COMMON LAW: of which in the Remainder of this Book.

10.

Two of them are however commiffible by these, and other, inferior Courts; viz. 1. REFUSAL, or NEGLECT, of JUSTICE. Remedies: By Writ of *Procedendo*, or *Mandamus*. 2. ENCROACHMENT OF JURISDICTION. Remedy: By Writ of Prohibition.

## CHAP. VIII.

*Of WRONGS, and their Remedies, respecting the Rights of PERSONS.*

1.

IN treating of the Cognizance of Injuries by the Courts of COMMON LAW, may be considered, 1. The INJURIES themselves, and their respective REMEDIES. 2. The PURSUIT of those Remedies in the several Courts.

2.

INJURIES between Subject and Subject, cognizable by the Courts of COMMON LAW, are in general REMEDIED by putting the Party injured into Possession of that Right, whereof he is unjustly deprived.

3. This

3.

This is effected, 1. By DELIVERY of the THING detained to the rightful Owner. 2. Where that Remedy is either impossible or inadequate, by giving the Party injured a SATISFACTION in DAMAGES.

4.

The Instruments, by which these Remedies may be obtained, are SUITS or ACTIONS; which are defined to be the legal Demand of one's Right: And these are, 1. Personal. 2. Real. 3. Mixed.

5.

Injuries (whereof some are with, others without, FORCE) are, 1. Injuries to the Rights of PERSONS. 2. Injuries to the Rights of PROPERTY. And the former are, 1. Injuries to the ABSOLUTE, 2. Injuries to the RELATIVE, Rights of Persons.

6.

The ABSOLUTE Rights of Individuals are, 1. PERSONAL SECURITY. 2. PERSONAL LIBERTY. 3. PRIVATE PROPERTY. (See Book I. Ch. 1.) To which the Injuries must be correspondent.

7.

Injuries to PERSONAL SECURITY are, 1. Against a Man's LIFE. 2. Against his Limbs. 3. Against his BODY. 4. Against his HEALTH. 5. Against his REPUTATION.—The first must be referred to the next Book.

8.

Injuries to the LIMBS and BODY are, 1. THREATS. 2. ASSAULT. 3. BATTERY. 4. WOUNDING. 5. MAYHEM.

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5. MAYHEM. Remedy: By Action of Trespass, *vi & armis*; for Damages.

9.

Injuries to HEALTH, by any unwholesome Practices, are remedied by a special Action of Trespass, on the Case; for Damages.

10.

Injuries to REPUTATION are, 1. Slanderous and malicious WORDS. Remedy: By Action on the Case; for Damages. 2. LIBELS. Remedy: The same. 3. Malicious PROSECUTIONS. Remedy: By Action of Conspiracy, or on the Case; for Damages.

11.

The sole Injury to PERSONAL LIBERTY is FALSE IMPRISONMENT. Remedies: 1. By Writ of, 1st, Mainprize; 2dly, *Odio & Atia*; 3dly, *Homina replegiando*. 4thly, *Habeas Corpus*; to remove the Wrong. 2. By Action of Trespass; to recover Damages.

12.

For Injuries to PRIVATE PROPERTY, see the next Chapter.

13.

Injuries to RELATIVE Rights affect, 1. HUSBANDS. 2. PARENTS. 3. GUARDIANS. 4. MASTERS.

14.

Injuries to an HUSBAND are, 1. ABDUCTION, or taking away his Wife. Remedy: By Action of  
Tres-



TRESPASS, *de Uxore rapta & abducta*; to recover Possession of his Wife, and Damages. 2. CRIMINAL CONVERSATION with her. Remedy: By Action on the Case; for Damages. 3. BEATING her. Remedy: By Action on the Case, *per quod Consortium amisit*; for Damages.

## 15.

The only Injury to a PARENT, or GUARDIAN, is the ABDUCTION of their Children, or Wards. Remedy: By Action of TRESPASS, *de Filiis, vel Custodiis, raptis vel abductis*; to recover Possession of them, and Damages.

## 16.

Injuries to a MASTER are, 1. RETAINING his Servants. Remedy: By Action on the Case; for Damages. 2. BEATING them. Remedy: By Action on the Case, *per quod Servitium amisit*; for Damages.

C H A P. IX.

*Of Injuries to PERSONAL PROPERTY.*

I.

**I**Njuries to the Rights of PROPERTY are either to those of PERSONAL, or REAL, Property.

2.

PERSONAL Property is either in POSSESSION, or in ACTION.

3.

Injuries to personal Property in POSSESSION are, 1. By DISPOSSESSION. 2. By DAMAGE, while the Owner remains in Possession.

4.

DISPOSSESSION may be effected, 1. By an unlawful TAKING. 2. By an unlawful DETAINING.

5.

For the unlawful TAKING of Goods and Chattels personal; the Remedy is, 1. Actual Restitution; which (in case of a wrongful Distress) is obtained by Action of Replevin. 2. Satisfaction in Damages: 1st, in case of *Rescous*, by Action of *Rescous*, Poundbreach, or on the Case; 2dly, in case of other unlawful Takings, by Action of Trespass, or Trover.

6.

For the unlawful DETAINING of Goods lawfully taken, the Remedy is also, 1. Actual Restitution;  
by

by Action of Replevin, or Detinue. 2. Satisfaction in Damages; by Action on the Case, for Trover and Conversion.

7.

For DAMAGE to personal Property, while in the Owner's Possession, the Remedy is in Damages; by Action of Trespass *vi & armis*, in case the Act be immediately injurious; or by Action of Trespass on the Case, to redress consequential Damage.

8.

Injuries to personal Property, in ACTION, arise by Breach of CONTRACTS, 1. EXPRESS. 2. IMPLIED.

9.

Breaches of EXPRESS Contracts are, 1. By NONPAYMENT of DEBTS. Remedy: 1st, Specific Payment; recoverable by Action of Debt. 2dly, Damages for Nonpayment; recoverable by Action on the Case. 2. By NONPERFORMANCE of COVENANTS. Remedy: By Action of Covenant, 1st, to recover Damages, in Covenants personal; 2dly, to compel Performance, in Covenants real. 3. By NONPERFORMANCE of PROMISES, or ASSUMPSITS. Remedy: By Action on the Case; for Damages.

10.

IMPLIED Contracts are such as arise, 1. From the Nature and Constitution of GOVERNMENT. 2. From REASON and the Construction of Law.

11.

Breaches of Contracts, implied in the Nature of GOVERNMENT, are by the NONPAYMENT of Money which the Laws have directed to be paid. Remedy:  
By

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By Action of Debt; (which, in such cases, is frequently a POPULAR, frequently a *qui tam* Action) to compel the specific Payment; — or, sometimes, by Action on the Case; for Damages.

12.

Breaches of Contracts, implied in REASON and Construction of Law, are by the NONPERFORMANCE of legal presumptive ASSUMPSITS: For which the Remedy is in Damages; by an Action on the Case, on the implied ASSUMPSITS, 1. Of a *Quantum meruit*. 2. Of a *Quantum valebat*. 3. Of money expended for another. 4. Of receiving Money to another's Use. 5. Of an *Infirmul computassent*, on an Account stated; (the Remedy on an Account unstated being by Action of Account.) 6. Of performing one's Duty, in any Employment, with Integrity, Diligence, and Skill. In some of which Cases an Action of Deceit (or on the Case, in nature of Deceit) will lie.

## C H A P. X.

*Of Injuries to REAL Property; and, first, of*  
 DISPOSSESSION, or OUSTER, *of the*  
 FREEHOLD.

## 1.

**I**Njuries affecting REAL Property are, 1. OUSTER.  
 2. TRESPASS. 3. NUSANCE. 4. WASTE.  
 5. SUBTRACTION. 6. DISTURBANCE.

## 2.

OUSTER is the Amotion of Possession; and  
 is, 1. From FREEHOLDS. 2. From CHATTELS  
 real.

## 3.

Ouster from FREEHOLDS is effected by, 1. A-  
 BATEMENT. 2. INTRUSION. 3. DISSEISIN. 4. DIS-  
 CONTINUANCE. 5. DEFORCEMENT.

## 4.

ABATEMENT is the Entry of a Stranger, after  
 the Death of the Ancestor, before the Heir.

## 5.

INTRUSION is the Entry of a Stranger, after a  
 particular Estate of Freehold is determined, before  
 him in Remainder or Reversion.

## 6.

DISSEISIN is a wrongful Putting out of him that  
 is seised of the Freehold.

7. Dis-

7.

DISCONTINUANCE is where Tenant in Tail, or the Husband of Tenant in Fee, makes a larger Estate of the Land than the Law alloweth.

8.

DEFORCEMENT is any other Detainer of the Freehold from him who hath the Property, but who never had the Possession.

9.

The universal Remedy for all these is Restitution or Delivery of Possession; and, sometimes, Damages for the Detention. This is effected, 1. By mere ENTRY. 2. By ACTION POSSESSORY. 3. By Writ of RIGHT.

10.

Mere ENTRY on Lands, by him who hath the apparent Right of Possession, will (if PEACEABLE) devert the mere POSSESSION of a Wrongdoer. But FORCIBLE Entries are remedied by immediate Restitution, to be given by a Justice of the Peace.

11.

Where the Wrongdoer hath not only mere Possession, but also an APPARENT Right of Possession, this may be deverted by him who hath the ACTUAL Right of Possession, by means of the POSSESSORY Actions of WRIT of ENTRY, or ASSISE.

12.

A Writ of ENTRY<sup>1</sup> is a real Action, which disproves the Title of the Tenant, by shewing the unlawful Means, under which he gained or continues

<sup>1</sup> See APPENDIX, No. VII. §. 1.

Possession. And it may be brought either against the Wrongdoer himself, or in the Degrees called the *Per*, the *Per* and *Cui*, and the *Post*.

## 13.

An ASSISE is a real Action, which proves the Title of the Demandant, by shewing his own, or his Ancestor's, Possession. And it may be brought either to remedy Abatements; viz. the Assise of *Mort d'ancestor*, &c: Or to remedy recent Disseisins; viz. the Assise of *novel Disseisin*.

## 14.

Where the Wrongdoer hath gained the actual Right of Possession, he who hath the Right of PROPERTY can only be remedied by a Writ of RIGHT, or some Writ of a similar Nature. As,  
 1. Where such Right of Possession is gained by the DISCONTINUANCE of Tenant in Tail. Remedy, for the Right of Property: By Writ of *Formedon*.  
 2. Where gained by RECOVERY in a possessory Action, had against Tenants of particular Estates by their own Default. Remedy: By Writ of *Quod ei deforceat*.  
 3. Where gained by RECOVERY in a possessory Action, had upon the Merits.—4. Where gained by the STATUTE of LIMITATIONS.—Remedy, in both Cases: By a mere Writ of RIGHT, the highest Writ in the Law. j

j See APPENDIX, No. VIII.

C H A P. XI.

Of DISPOSSESSION, or OUSTER, of CHAT-  
TELS *real*.

1.

Ouster from CHATTELS *real* is, 1. From Estates by STATUTE and ELEGIT. 2. From an Estate for YEARS.

2.

Ouster, from Estates by STATUTE or ELEGIT, is effected by a Kind of DISSEISIN. Remedy: Restitution, and Damages; by Assise of *novel Disseisin*.

3.

Ouster, from an Estate for YEARS, is effected by a like Disseisin or EJECTMENT. Remedy: Restitution, and Damages; 1. By Writ of *Ejectione Firmæ*. 2. By Writ of *Quare ejecit infra Terminum*.

4.

A Writ of *Ejectione Firmæ* or Action of Trespass in Ejectment, lieth where Lands, &c, are let for a Term of Years, and the Lessee is ousted or ejected from his Term; in which Case he shall recover Possession of his Term, and Damages.

5.

This is now the usual Method of trying Titles to Land, instead of an Action *real*: viz. By, 1. The Claimant's making an actual (or supposed) Lease upon the Land to the Plaintiff. 2. The Plaintiff's



actual (or supposed) Entry thereupon. 3. His actual (or supposed) Ouster and Ejectment by the Defendant. For which Injury this Action is brought, either against the Tenant, or (more usually) against some casual, or fictitious, Ejector; in whose Stead the Tenant may be admitted Defendant, on condition that the Lease, Entry, and Ouster be confessed, and that nothing else be disputed but the Merits of the Title, claimed by the Lessor of the Plaintiff<sup>k</sup>.

## 6.

A Writ of *Quare ejecit infra Terminum* is an Action of a similar Nature; only not brought against the Wrongdoer or Ejector himself, but such as are in Possession under his Title.

## C H A P. XII.

## Of TRESPASS.

## 1.

**T**RESPASS is an Entry upon, and Damage done to, another's Lands, by one's self, or one's Cattel; without any lawful Authority, or Cause of Justification: Which is called a Breach of his Close. Remedy: Damages; By Action of Trespass, *quare Clausum fregit*: Besides that of Distress, Damage feasant. But, unless the Title to the Land came chiefly in question, or the Trespass was wilful or malicious, the Plaintiff (if the Damages be under forty shillings) shall recover no more Costs than Damages.

<sup>k</sup> See APPENDIX, No. IX.

C H A P. XIII.

*Of NUSANCE.*

1.

**N**USANCE, or Annoyance, is any thing that worketh Damage, or Inconvenience : And it is either a PUBLIC and COMMON Nufance, of which in the next Book ; or, a PRIVATE Nufance, which is any thing done to the Hurt or Annoyance of, 1. The corporeal, 2. The incorporeal, Hereditaments of another.

2.

The Remedies, for a private Nufance, (besides that of Abatement,) are, 1. Damages ; by Action on the Case ; (which also lies for special Prejudice by a public Nufance.) 2. Removal thereof, and Damages ; by Assise of Nufance. 3. Like Removal, and Damages ; by Writ of *Quod permittat proferre*.

## CHAP. XIV.

## Of WASTE.

## I.

**W**ASTE is a Spoil and Destruction in Lands and Tenements, to the Injury of him who hath, 1. An immediate Interest (as, by Right of Common) in the Lands. 2. The Remainder or Reversion of the Inheritance.

## 2.

The Remedies, for a Commoner, are Restitution, and Damages; by Assise of Common: Or, Damages only; by Action on the Case.

## 3.

The Remedy, for him in Remainder, or Reversion, is, 1. Preventive: by Writ of *Estrepement* at Law, or Injunction out of Chancery; to stay Waste. 2. Corrective: By Action of Waste; to recover the Place wasted, and Damages.

C H A P. XV.

*Of* SUBTRACTION.

1.

**S**UBTRACTION is when one, who owes Services to another, withdraws or neglects to perform them. This may be, 1. Of Rents, and other Services, due by TENURE. 2. Of those due by CUSTOM.

2.

For Subtraction of Rents and Services, due by TENURE, the Remedy is, 1. By Distress; to compel the Payment, or Performance. 2. By Action of Debt; 3. By Assise. 4. By Writ *de Consuetudinibus et Servitiis*; — to compel the Payment. 5. By Writ of *Cessavit*; — and 6. By Writ of Right *sur Disclaimer*; — to recover the Land itself.

3.

To remedy the Oppression of the Lord, the Law has also given, 1. The Writ of *Ne injuste vexes*: 2. The Writ of *Mefne*.

4.

For Subtraction of Services, due by CUSTOM, the Remedy is, 1. By Writ of *Seffa ad Molendinum, Furnum, Torrale, &c*; to compel the Performance, and recover Damages. 2. By Action on the Case; for Damages only.

C H A P. XVI.

*Of* DISTURBANCE.

1.

**D**ISTURBANCE is the Hindering, or Disquieting, the Owners of an incorporeal Hereditament, in their regular and lawful Enjoyment of it.

2.

Disturbances are, 1. Of FRANCHISES. 2. Of COMMONS. 3. Of WAYS. 4. Of TENURE. 5. Of PATRONAGE.

3.

Disturbance, of FRANCHISES, is remedied by a special Action on the Case; for Damages.

4.

Disturbance, of COMMON, is, 1. INTERCOMMONING without Right. Remedy: Damages; by an Action on the Case, or of Trespass: Besides Distress, Damage feasant; to compel Satisfaction. 2. SURCHARGING the Common. Remedies: Distress, Damage feasant; to compel Satisfaction: Action on the Case; for Damages: Or, Writ of Admeasurement of Pasture; to apportion the Common; — and Writ *de secunda Superoneratione*; for the supernumerary Cattel, and Damages. 3. ENCLOSURE, or Obstruction. Remedies: Restitution of the Common, and Damages; by Assise of *novel Disseisin*,

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*Disseisin*, and by Writ of *Quod permittat* : Or, Damages only ; by Action on the Case.

5.

Disturbance, of *WAYS*, is the Obstruction, 1. Of a Way in gross, by the Owner of the Land. 2. Of a Way appendant, by a Stranger. Remedy, for both : Damages ; by Action on the Case.

6.

Disturbance, of *TENURE*, by driving away Tenants, is remedied by a special Action on the Case ; for Damages.

7.

Disturbance, of *PATRONAGE*, is the Hindrance of a Patron to present his Clerk to a Benefice ; whereof *USURPATION*, within six Months, is now become a Species.

8.

Disturbers may be, 1. The Pseudo-Patron, by his wrongful Presentation. 2. His Clerk, by demanding Institution. 3. The Ordinary, by refusing the Clerk of the true Patron.

9.

The Remedies are, 1. By Assise of *darrein Presentment* ; 2. By Writ of *Quare impedit* ;— to compel Institution and recover Damages : Consequent to which are the Writs of *Quare incumbravit*, and *Quare non admisit* ; for subsequent Damages. 3. By Writ of Right of Advowson ; to compel Institution, or establish the permanent Right.

## CHAP. XVII.

*Of INJURIES, proceeding from, or affecting,  
the CROWN.*

I.

**I**NJURIES, to which the CROWN is a Party, are,  
1. Where the Crown is the Aggressor. 2. Where  
the Crown is the Sufferer.

2.

The Crown is the Aggressor, whenever it is in  
Possession of any Property to which the Subject  
hath a Right.

3.

This is remedied, 1. By PETITION of RIGHT;  
where the Right is grounded on Facts disclosed in  
the Petition itself. 2. By *Monstrans de Droit*; where  
the Claim is grounded on Facts, already appearing  
on Record. The Effect of both which is to remove  
the Hands (or Possession) of the King.

4.

Where the Crown is the Sufferer, the King's  
Remedies are, 1. By such common Law Actions  
as are consistent with the royal Dignity. 2. By  
INQUEST of OFFICE, to recover Possession: which,  
when found, gives the King his Right by solemn  
Matter of Record; but may afterwards be TRA-  
VERSED by the Subject. 3. By Writ of *Scire facias*,  
to

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to repeal the King's Patent or Grant. 4. By INFORMATION of INTRUSION, to give Damages for any Trespass on the Lands of the Crown ; or of DEBT, to recover Monies due upon Contract, or forfeited by the Breach of any penal Statute ; or sometimes (in the latter case) by Information *in Rem* : all filed in the Exchequer *ex Officio* by the King's Attorney-general. 5. By Writ of *Quo Warranto*, or Information in the nature of such Writ ; to seize into the King's Hands any Franchise usurped by the Subject, or to oust an Usurper from any public Office. 6. By Writ of *Mandamus*, unless Cause ; to admit or restore any Person intitled to a Franchise or Office : to which if a false Cause be returned, the Remedy is by Traverse, or by Action on the Case for Damages ; and, in consequence, a peremptory *Mandamus*, or Writ of Restitution.

C H A P. XVIII.

*Of the PURSUIT of Remedies by ACTION ;  
and, first, of the ORIGINAL WRIT.*

I.

THE PURSUIT of the several Remedies, furnished by the LAWS of ENGLAND, is, 1. By ACTION in the Courts of COMMON LAW. 2. By PROCEEDINGS in the Courts of EQUITY.

2. Of



## 2.

OF an ACTION in the Court of COMMON PLEAS (originally the proper Court for prosecuting civil Suits) the orderly Parts are, 1. The ORIGINAL Writ. 2. The PROCESS. 3. The PLEADINGS. 4. The ISSUE, or DEMURRER. 5. The TRIAL. 6. The JUDGMENT. 7. The Proceedings in nature of APPEAL. 8. The EXECUTION.

## 3.

The ORIGINAL Writ is the Beginning or Foundation of a Suit, and is either OPTIONAL (called a *Praecipe*<sup>l</sup>) commanding the Defendant to do something in certain, or otherwise shew Cause to the contrary; or PEREMPTORY (called a *Si fecerit se securum*<sup>m</sup>) commanding, upon Security given by the Plaintiff, the Defendant to appear in Court, to shew wherefore he hath injured the Plaintiff: Both issuing out of Chancery under the King's great Seal, and returnable in Bank during Term-time.

## C H A P. XIX.

## Of PROCESS.

## I.

PROCESS<sup>a</sup> is the Means of compelling the Defendant to appear in Court.

<sup>l</sup> See APPENDIX, No. X. §. 1.

<sup>m</sup> See APPENDIX, No. IX. §. 1.

<sup>n</sup> See APPENDIX, No. X. §. 2, 3, 4, 5.

## 2. This

2.

This includes, 1. Summons. 2. The Writ of Attachment, or *Pone*; which is sometimes the first or original Process. 3. The Writ of *Distingas*, or Distress infinite. 4. The Writs of *Capias ad respondendum*, and *Testatum Capias*: Or, instead of these, in the King's Bench, the Bill of *Middlesex*, and Writ of *Latitat*: — and, in the Exchequer, the Writ of *Quo minus*. 5. The *alias* and *pluries* Writs. 6. The Exigent, or Writ of *Exigi facias*, Proclamations, and Outlawry. 7. Appearance, and common Bail. 8. The Arrest. 9. Special Bail, first to the Sheriff, and then to the Action.

## CHAP. XX.

### Of PLEADINGS.

I.

**P**LEADINGS\* are the mutual Altercations of the Plaintiff and Defendant in Writing; under which are comprized, 1. The Declaration or Count; (wherein, incidentally, of the *Visne*, *Nonsuit*, *Retrahit*, and *Discontinuance*.) 2. The Defence, Claim of Cognizance, Imparlance, View, Oyer, Aid-prayer, Voucher, or Age; 3. The Plea; which is either a DILATORY Plea, (ist, to the Ju-

\* See APPENDIX, No. IX, §. 4. No. X, §. 6.

isdiction;

risdiction; 2dly, in Disability of the Plaintiff; 3dly, in Abatement:) Or it is a Plea TO THE ACTION; sometimes confessing the Action, either in whole, or in part; (wherein of a Tender, paying Money into Court, and Set-off;) but usually denying the Complaint, by pleading either, 1st, the general Issue; or, 2dly, a special Bar; (wherein of Justifications, the Statutes of Limitation, &c;) 4. Replication, Rejoinder, Surrejoinder, Rebutter, Surrebutter, &c. Therein of Estoppels, Colour, Duplicity, Departure, New Assignment, Protestation, Averment, and other Incidents of Pleading.

## CHAP. XXI.

### *Of* ISSUE *and* DEMURRER.

#### 1.

**I**SSUE is where the Parties, in a Course of Pleading, come to a Point affirmed on one Side and denied on the other: Which, if it be a Matter of Law, is called a DEMURRER<sup>p</sup>; if it be a Matter of Fact, still retains the Name of an Issue<sup>q</sup>, of Fact.

#### 2.

CONTINUANCE<sup>r</sup> is the Detaining of the Parties in Court from Time to Time, by giving them a Day certain to appear upon. And, if any new Mat-

<sup>p</sup> See APPENDIX, No. X. §. 6.

<sup>q</sup> See APPENDIX, No. IX. §. 4.

<sup>r</sup> See APPENDIX, No. IX. §. 4. No. X. §. 6.

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ter arises since the last Continuance or Adjournment, the Defendant may take Advantage of it, even after Demurrer or Issue, by alleging it in a Plea *puis darrein Continuance*.

3.

The Determination of an Issue in Law, or Demurrer, is by the Opinion of the Judges of the Court; which is afterwards entered on RECORD.

C H A P. XXII.

*Of the several Species of TRIAL.*

1.

**T**RIAL is the Examination of the Matter of Fact put in Issue.

2.

The Species of Trials are, 1. By the RECORD. 2. By INSPECTION. 3. By CERTIFICATE. 4. By WITNESSES. 5. By WAGER of BATTEL. 6. By WAGER of LAW. 7. By JURY.

3.

Trial by the RECORD is had, when the Existence of such Record is the Point in Issue,

4.

Trial by INSPECTION or EXAMINATION is had by the Court, principally when the Matter in Issue is the evident Object of the Senses.

5. Trial

5.

Trial by CERTIFICATE is had in those Cases, where such Certificate must have been conclusive to a Jury.

6.

Trial by WITNESSES (the regular Method in the civil Law) is only used on a Writ of Dower, when the Death of the Husband is in Issue.

7.

Trial by WAGER of BATTEL, in civil Cases, is only had on a Writ of Right: But, in lieu thereof, the Tenant may have, at his Option, the Trial by the GRAND ASSISE.

8.

Trial by WAGER of LAW is only had, where the Matter in Issue may be supposed to have been privately transacted, between the Parties themselves, without the Intervention of other Witnesses.

## C H A P. XXIII.

### *Of the Trial by JURY.*

I.

**T**rial by JURY is, 1. EXTRAORDINARY; as, by the grand Assise, in Writs of Right; and by the grand Jury, in Writs of Attaint. 2. ORDINARY.

2. The

2.

The Method and Procefs of the ORDINARY Trial by Jury 'is, 1. The Writ of *Venire facias* to the Sheriff, Coroners, or Elifors ; with the fubfequent compulfive Procefs of *Habeas Corpora*, or *Distringas*. 2. The Carrying down of the Record to the Court of *Nifi prius*. 3. The Sheriff's Return ; or Panel of, 1ft, fpecial, 2dly, common Jurors. 4. The Challenges ; 1ft, to the Arráy ; 2dly, to the Polls of the Jurors ; either, *propter Honoris Refpectum*, *propter Defectum*, *propter Affectum* (which is fometimes a principal Challenge, fometimes to the Favour,) or, *propter Delictum*. 5. The *Tales de circumftantibus*. 6. The Oath of the Jury. 7. The Evidence ; which is either by Proofs, 1ft, written ; 2dly, parol :—or, by the private Knowlege of the Jurors. 8. The Verdict ; which may be, 1ft, privy ; 2dly, public ; 3dly, fpecial.

CHAP. XXIV.

*Of JUDGMENT, and it's Incidents.*

1.

**W**Hatever is tranfacted at the Trial, in the Court of *Nifi prius*, is added to the Record under the Name of a POSTEA : Confequent upon which is the JUDGMENT.

\* See APPENDIX, No. IX. §. 4.

H

2. Judg-

2.

Judgment may be ARRESTED<sup>†</sup> or stayed for Causes, 1. Extrinsic, or *dehors* the Record; as in the Case of NEW TRIALS. 2. Intrinsic, or within it; as where the Declaration varies from the Writ, or the Verdict from the Pleadings, and Issue; or where the Case, laid in the Declaration, is not sufficient to support the Action in point of Law.

3.

Where the Issue is immaterial, or insufficient, the Court may award a REPLEADER.

4.

JUDGMENT is the Sentence of the Law, pronounced by the Court, upon the Matter contained in the Record.

5.

Judgments are, 1. Interlocutory; which are incomplete till perfected by a Writ of Enquiry. 2. Final.

6.

COSTS, or Expenses of Suit, are now the necessary Consequence of obtaining Judgment.

<sup>†</sup> See APPENDIX, No. IX. §. 4.

CHAP. XXV.

*Of PROCEEDINGS, in the Nature of APPEALS.*

I.

**P**ROCEEDINGS, in the Nature of APPEALS from Judgment, are, 1. A Writ of ATTAINT; to impeach the Verdict of a Jury; which of late has been superseded by new Trials. 2. A Writ of *Audita Querela*; to discharge a Judgment by Matter that has since happened. 3. A Writ of ERROR\*, from one Court of Record to another; to correct Judgments, erroneous in point of Law, and not helped by the Statutes of Amendment and Jeofails.

2.

Writs of Error lie, 1. To the Court of KING'S-BENCH, from all inferior Courts of Record; from the Court of COMMON-PLEAS at WESTMINSTER; and from the Court of KING'S-BENCH in IRELAND. 2. To the Courts of EXCHEQUER-CHAMBER, from the Law Side of the Court of EXCHEQUER; and from Proceedings in the Court of KING'S BENCH by Bill. 3. To the House of PEERS, from Proceedings in the Court of KING'S-BENCH by Original, and on Writs of Error; and from the several Courts of EXCHEQUER-CHAMBER.

\* See APPENDIX, No. X. §. 6.



## CHAP. XXVI.

## OF EXECUTION.

## I.

**E**XECUTION is the Putting in Force of the Sentence or Judgment of the Law: Which is effected, 1. Where Possession of any Héreditament is recovered; by Writ of *Habere facias Seisinam, Possessionem, &c.* 2. Where any thing is awarded to be done or rendered, by a special Writ for that purpose: as, by Writ of Abatement in case of Nuisance; *Retorno habendo*, and *Capias in Witbernem* in Replevin; *Distringas* and *Scire facias* in Detinue. 3. Where Money only is recovered; by Writ of 1st, *Capias ad Satisfaciendum*<sup>w</sup>, against the BODY of the Defendant; or, in default thereof, *Scire facias* against his Bail. 2dly, *Fieri facias*<sup>x</sup>, against his GOODS and Chattels. 3dly, *Levari facias*, against his GOODS, and the PROFITS of his LANDS. 4thly, *Elegit*, against his GOODS, and the POSSESSION of his LANDS. 5thly, *Extendi facias*, and other Process, on Statutes, Recognizances, &c, against his BODY, LANDS, and GOODS.

<sup>w</sup> x See APPENDIX. No. X. §. 7.

CHAP. XXVII.

*Of Proceedings in the Courts of EQUITY.*

1.

**M**atters of Equity, which belong to the peculiar Jurisdiction of the Court of CHANCERY, are, 1. The Guardianship of Infants. 2. The Custody of Idiots and Lunatics. 3. The Superintendence of Charities. 4. Commmissions of Bankrupt.

2.

The Court of EXCHEQUER and the Dutchy-Court of LANCASTER, have also some peculiar Causes, in which the Interest of the King is more immediately concerned.

3.

EQUITY is the true Sense and sound Interpretation of the Rules of Law; and, as such, is equally attended to by the Judges of the Courts both of common Law and Equity.

4.

The essential Differences, whereby the English Courts of Equity are distinguished from the Courts of Law, are, 1. The Mode of PROOF, by a Discovery on the Oath of the Party; which gives a Jurisdiction in Matters of Account, and Fraud. 2. The Mode of TRIAL; by Depositions taken in any part of the World. 3. The Mode of RELIEF;

by giving a more specific and extensive Remedy, than can be had in the Courts of Law : as, by carrying Agreements into Execution, staying Waste or other Injuries by Injunction, directing the Sale of incumbered Lands, &c. 4. The true Construction of SECURITIES for Money, by considering them merely as a Pledge. 5. The Execution of TRUSTS, or second Uses, in a Manner analogous to the Law of legal Estates.

5.

The Proceedings in the Court of Chancery, (to which those in the Exchequer, &c, very nearly conform,) are, 1. Bill. 2. Writ of *Subpoena*; and perhaps, injunction. 3. Process of Contempt; viz. (ordinarily) Attachment, Attachment with Proclamations, Commission of Rebellion, Serjeant at Arms, and Sequestration. 4. Appearance. 5. Demurrer. 6. Plea. 7. Answer. 8. Exceptions; Amendments; crosses, or supplemental, Bills; Bills of Revivor, Interpleader, &c. 9. Replication. 10. Issue. 11. Depositions, taken upon Interrogatories; and subsequent Publication thereof. 12. Hearing. 13. Interlocutory Decree; feigned Issue, and Trial; Reference to the Master, and Report; &c. 14. Final Decree. 15. Rehearing, or Bill of Review. 16. Appeal to Parliament.

BOOK

BOOK THE FOURTH.

*Of* PUBLIC WRONGS.

CHAPTER I.

*Of the* NATURE *of* CRIMES, *and their*  
PUNISHMENT.

I.

IN treating of PUBLIC WRONGS may be considered, 1. The general NATURE of Crimes, and Punishments. 2. The Persons CAPABLE of committing Crimes. 3. Their several DEGREES of Guilt. 4. The several SPECIES of Crimes, and their respective Punishments, 5. The Means of PREVENTION. 6. The Method of PUNISHMENT.

2.

A CRIME, or MISDEMESNOR, is an Act committed, or omitted, in Violation of a public Law, either forbidding or commanding it.

3.

Crimes are distinguished from civil Injuries, in that they are a Breach and Violation of the PUBLIC Rights, due to the whole Community, considered as a Community.

4. PUNISH-

4.

PUNISHMENTS may be considered with regard to,  
1. The POWER; 2. The END; 3. The MEASURE;  
—of their Infliction.

5.

The POWER, or Right, of inflicting human Punishments, for NATURAL Crimes, or such as are *Mala in se*, was by the Law of Nature vested in every Individual: but, by the fundamental Contract of Society, is now transferred to the sovereign Power: In which also is vested, by the same Contract, the Right of punishing POSITIVE Offences, or such as are *Mala prohibita*.

6.

The END of human Punishments is to prevent future Offences; 1. By amending the Offender himself. 2. By deterring others through his Example. 3. By depriving him of the Power to do future Mischief.

7.

The MEASURE of human Punishments must be determined by the Wisdom of the sovereign Power, and not by any uniform universal Rule: Though that Wisdom may be regulated, and assisted, by certain general, equitable, Principles.

CHAP. II.

*Of the Persons CAPABLE of committing Crimes.*

1.

**A**LL Persons are CAPABLE of committing Crimes, unless there be in them a DEFECT of WILL: For, to constitute a legal Crime, there must be both a vitious Will, and a vitious Act.

2.

The Will does not concur with the Act, 1. Where there is a Defect of UNDERSTANDING. 2. Where no Will is EXERTED. 3. Where the Act is CONSTRAINED by Force and Violence.

3.

A vitious Will may therefore be wanting, in the Cases of, 1. Infancy. 2. Idiocy, or Lunacy. 3. Drunkenness; which doth not, however, excuse. 4. Misfortune. 5. Ignorance, or Mistake of Fact. 6. Compulsion, or Necessity: which is, 1st, that of civil Subjection; 2dly, that of Duress *per Minas*; 3dly, that of choosing the least pernicious of two Evils, where one is unavoidable; 4thly, that of Want, or Hunger; which is no legitimate Excuse.

4.

The King, from his Excellence and Dignity, is also incapable of doing Wrong.

CHAP.

## CHAP. III.

*Of PRINCIPALS and ACCESSORIES.*

1.

**T**HE different DEGREES of Guilt in Criminals are, 1. As PRINCIPALS. 2. As ACCESSORIES.

2.

A PRINCIPAL in a Crime is, 1. He who commits the Fact. 2. He who is present at, aiding, and abetting, the Commission.

3.

An ACCESSORY is he who doth not commit the Fact, nor is present at the Commission; but is in some sort concerned therein, either BEFORE OR AFTER.

4.

Accessories can only be in petit Treason, and Felony: In high Treason, and Misdemeanors, all are Principals.

5.

An Accessory, BEFORE the Fact, is one who, being absent when the Crime is committed, hath procured, counselled, or commanded another to commit it.

6.

An Accessory, AFTER the Fact, is where a Person, knowing a Felony to have been committed, receives, relieves, comforts, or assists the Felon.

Such

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Such Accessory is usually entitled to the Benefit of Clergy ; where the Principal, and Accessory BEFORE the Fact, are excluded from it.

CHAP. IV.

*Of Offences against GOD and RELIGION.*

I.

CRimes and Misdemeanors, cognizable by the LAWS of ENGLAND, are such as more immediately offend, 1. GOD, and his holy RELIGION. 2. The LAW of NATIONS. 3. The KING, and his GOVERNMENT. 4. The PUBLIC, or COMMON-WEALTH. 5. INDIVIDUALS.

2.

Crimes, more immediately offending GOD and RELIGION, are, 1. APOSTACY. For which the Penalty is Incapacity, and Imprisonment. 2. HERESY. Penalty, for one Species thereof : The same. 3. Offences against the established CHURCH:—Either, by REVILING it's Ordinances. Penalties : Fine ; Deprivation ; Imprisonment ; Forfeiture.—Or, by NONCONFORMITY to it's Worship : 1st, Through total IRRELIGION. Penalty : Fine. 2dly, Through protestant DISSENTING. Penalty : Suspended by the Toleration Act. 3dly, Through POPERY, either in Professors of the popish Religion, popish  
Re-



Recusants, convict, or popish Priests. Penalties : Incapacity ; double Taxes ; Imprisonment ; Fines ; Forfeitures ; Abjuration of the Realm ; Judgment of Felony, without Clergy ; and Judgment of high Treason. 4. **BLASPHEMY.** Penalty : Fine, Imprisonment, and corporal Punishment. 5. **Profane SWEARING and CURSING.** Penalty : Fine, or House of Correction. 6. **WITCHCRAFT ;** or, at least, the Pretence thereto. Penalty : Imprisonment, and Pillory. 7. **Religious IMPOSTURES.** Penalty, Fine, Imprisonment, and corporal Punishment. 8. **SIMONY.** Penalties : Forfeiture of double Value ; Incapacity. 9. **SABBATH-BREAKING.** Penalty : Fine. 10. **DRUNKENNESS.** Penalty : Fine, or Stocks. 11. **LEWDNESS.** Penalties : Fine ; Imprisonment ; House of Correction.

CHAP. V.

*Of OFFENCES against the LAW of NATIONS.*

I.

**T**HE LAW of NATIONS is a System of Rules, deducible by natural Reason, and established by universal Consent, to regulate the Intercourse between independent States.

2.

In ENGLAND, the LAW of NATIONS is adopted in it's full Extent, as part of the Law of the Land.

3.

Offences against this Law are principally incident to whole States or Nations ; but, when committed by private Subjects, are then the Objects of the municipal Law.

4.

Crimes against the LAW of NATIONS, animadverted on by the LAWS of ENGLAND, are, 1. Violation of SAFE-CONDUCTS. 2. Infringement of the Rights of EMBASSADORS. Penalty, in both : Arbitrary. 3. PIRACY. Penalty : Judgment of Felony, without Clergy.

## CHAP. VI.

*Of* HIGH TREASON.

## I.

**C**Rimes, and Misdemeanors, more peculiarly offending the KING, and his Government, are,  
 1. HIGH TREASON. 2. FELONIES injurious to the Prerogative. 3. PRAEMUNIRE. 4. Other MISPRISONS and CONTEMPTS.

## 2.

HIGH TREASON may, according to the Statute of EDWARD III, be committed, 1. By COMPASSING or IMAGINING the DEATH of the King, or Queen-confort, or their eldest Son and Heir; demonstrated by some overt Act. 2. By VIOLATING the King's Companion, his eldest Daughter, or the Wife of his eldest Son. 3. By some overt Act of LEVYING War against the King in his Realm. 4. By ADHERENCE to the King's Enemies. 5. By COUNTERFEITING the King's great or privy SEAL. 6. By COUNTERFEITING the King's MONEY, or Importing counterfeit Money. 7. By KILLING the Chancellor, Treasurer, or King's Justices, in the Execution of their Offices.

## 3.

HIGH TREASONS, created by subsequent Statutes, are such as relate, 1. To PAPISTS: As, the repeated Defence of the Pope's Jurisdiction; the Coming  
 from

from beyond Sea of a natural-born popish Priest; the Renouncing of Allegiance, and Reconciliation to the Pope, or other foreign Power. 2. To the COINAGE, or other Signatures of the King: As, Counterfeiting (or, Importing and Uttering counterfeit) foreign Coin, here current; Forging the Sign manual, privy Signet, or privy Seal; Falsifying, &c, the current Coin. 3. To the PROTESTANT SUCCESSION: As, Corresponding with, or Remitting Money to, the late Pretender's Sons; Endeavouring to impede the Succession; Writing or Printing, in Defence of any Pretender's Title, or in Derogation of the Act of Settlement, or of the Power of Parliament to limit the Descent of the Crown.

4.

The PUNISHMENT of high Treason, in MALES, is (generally) to be, 1. Drawn. 2. Hanged. 3. Embowelled alive. 4. Beheaded. 5. Quartered. 6. The Head and Quarters to be at the King's Disposal. But, in Treasons relating to the Coin, only to be drawn, and hanged till dead. FEMALES, in both cases, are to be drawn, and burned alive.

## C H A P. VII.

*Of FELONIES, injurious to the KING's  
PREROGATIVE.*

## I.

**F**ELONY is that Offence, which occasions the total Forfeiture of Lands or Goods at common Law ; now usually also punishable with Death, by Hanging ; unless through the Benefit of Clergy.

## 2.

FELONIES, injurious to the King's Prerogative (of which some are within, others without, Clergy) are, 1. Such as relate to the COIN : As, the wilful Uttering of counterfeit Money, &c ; (to which Head some inferior Misdemeanors affecting the Coinage may be also referred.) 2. Conspiring or Attempting to kill a PRIVY COUNSELLOR. 3. Serving FOREIGN States, or Enlisting Soldiers for FOREIGN Service. 4. Embezzling the King's ARMOUR or STORES. 5. DESERTION from the King's ARMIES, by Land or Sea.

C H A P. VIII.

*Of PRAEMUNIRE.*

I.

**P**RAEMUNIRE, in it's original Sense, is the Offence of Adhering to the temporal Power of the Pope, in Derogation of the regal Authority. Penalty: Outlawry, Forfeiture, and Imprisonment: Which hath since been extended to some Offences of a different Nature.

2.

Among these are, 1. Importing popish Trinkets. 2. Contributing to the Maintenance of popish Seminaries abroad, or popish Priest in England. 3. Molesting the Possessors of Abbey Lands. 4. Acting as Broker in an usurious Contract, for more than ten *per cent.* 5. Obtaining any Stay of Proceedings in Suits for Monopolies. 6. Obtaining an exclusive Patent for Gunpowder or Arms. 7. Exertion of Purveyance or Pre-emption. 8. Asserting a legislative Authority in both or either House of Parliament. 9. Sending any Subject a Prisoner beyond Sea. 10. Refusing the Oaths of Allegiance and Supremacy. 11. Preaching, teaching, or advised Speaking, in Defence of the Right of any Pretender to the Crown, or in Derogation of the Power of Parliament to limit the Succession.

I 12. Treat;

12. Treating of other Matters, by the Assembly of Peers of Scotland, convened for electing their Representatives in Parliament. 13. Unwarrantable Undertakings by unlawful Subscriptions to public Funds.

**C H A P. IX.**

*Of MISPRISIONS and CONTEMPTS, affecting the KING and GOVERNMENT.*

**I.**

**M**ISPRISIONS and CONTEMPTS are all such high Offences as are under the Degree of capital.

**2.**

These are, 1. **NEGATIVE**, in concealing what ought to be revealed. 2. **POSITIVE**, in committing what ought not to be done.

**3.**

**NEGATIVE** Misprisions are, 1. Misprision of **TREASON**. Penalty: Forfeiture and Imprisonment. 2. Misprision of **FELONY**. Penalty: Fine and Imprisonment. 3. Concealment of **TREASURE TROVE**. Penalty: Fine and Imprisonment.

**4.**

**POSITIVE** Misprisions, or high Misdemeanors and Contempts, are, 1. **MAL-ADMINISTRATION** of public Trusts, which includes the Crime of **PECULATION**.

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LATION. Usual Penalties: Banishment; Fines; Imprisonment; Disability. 2. Contempts against the King's PREROGATIVE. Penalty: Fine, and Imprisonment. 3. Contempts against his PERSON, and GOVERNMENT. Penalty: Fine, Imprisonment, and infamous corporal Punishment. 4. Contempts against his TITLE. Penalties: Fine, and Imprisonment; or, Fine, and Disability. 5. Contempts against his PALACES, or COURTS of Justice. Penalties: Fine; Imprisonment; corporal Punishment; Loss of right Hand; Forfeiture.

CHAP. X.

*Of Offences against public JUSTICE.*

I.

CRimes, especially affecting the COMMON-WEALTH, are Offences, 1. Against the public JUSTICE. 2. Against the public PEACE. 3. Against the public TRADE. 4. Against the public HEALTH. 5. Against the public POLICE, or OECONOMY.

2.

Offences, against the public JUSTICE, are, 1. EMBEZZLING or VACATING Records, and PERSONATING others in Courts of Justice. Penalty: Judgment of Felony, usually without Clergy. 2. COMPELLING Prisoners to become APPROVERS. Pen-



nalty: Judgment of Felony. 3. OBSTRUCTING the Execution of Process. 4. ESCAPES. 5. BREACH of Prison. 6. RESCUE. — Which four may, (according to the Circumstances) be either Felonies, or Misdemeanors punishable by Fine and Imprisonment. 7. RETURNING from TRANSPORTATION. This is Felony, without Clergy. 8. Taking REWARDS, to HELP one to his stolen Goods. Penalty: The same as for the Theft. 9. RECEIVING stolen Goods. Penalties; Transportation; Fine; and Imprisonment. 10. THEFTBOTE. 11. COMMON BARRETRY, and Suing in a feigned Name. 12. MAINTENANCE. 13. CHAMPERTY. — Penalty, in these four: Fine, and Imprisonment. 14. COMPOUNDING Prosecutions on penal Statutes. Penalty: Fine, Pillory, and Disability. 15. CONSPIRACY; and Threats of Accusation in order to extort Money, &c. Penalties: The villainous Judgment; Fine; Imprisonment; Pillory; Whipping; Transportation. 16. PERJURY, and Subornation thereof. Penalties: Infamy; Imprisonment; Fine, or Pillory; and, sometimes, Transportation or House of Correction. 17. BRIBERY. Penalty: Fine, and Imprisonment. 18. EMERACERY. Penalty: Infamy, Fine, and Imprisonment. 19. FALSE VERDICT. Penalty: The Judgment in Attaint. 20. NEGLIGENCE of public Officers, &c. Penalty: Fine and Forfeiture of the Office. 21. OPPRESSION by Magistrates. 22. EXTORTION of Officers. — Penalty, in both: Imprisonment, Fine, and sometimes Forfeiture of the Office.

C H A P. XI.

*Of OFFENCES against the public PEACE.*

I.

**O**ffences, against the public PEACE, are,  
1. RIOTOUS ASSEMBLIES to the Number of TWELVE. 2. Appearing armed, or Hunting, in DISGUISE. 3. THREATENING, or DEMANDING any valuable Thing, by Letter. — All these are Felonies, without Clergy. 4. Destroying of TURNPIKES, &c. Penalties: Whipping; Imprisonment; Judgment of Felony, with and without Clergy. 5. AFFRAYS. 6. RIOTS, ROUTS, and UNLAWFUL ASSEMBLIES. 7. Tumultuous PETITIONING. 8. Forcible ENTRY and DETAINER. — Penalty, in all four: Fine, and Imprisonment. 9. Going unusually ARMED. Penalty: Forfeiture of Arms, and Imprisonment. 10. Spreading FALSE NEWS. Penalty: Fine, and Imprisonment. 11. Pretended PROPHECIES. Penalties: Fine; Imprisonment; and Forfeiture. 12. CHALLENGES to fight. Penalty: Fine, Imprisonment, and sometimes Forfeiture. 13. LIBELS. Penalty: Fine, Imprisonment, and corporal Punishment.

## CHAP. XII.

*Of OFFENCES against public TRADE.*

1.

**O**ffences, against the public TRADE, are,  
 1. OWLING. Penalties: Fines; Forfeiture; Imprisonment; Loss of left Hand; Transportation; Judgment of Felony. 2. SMUGGLING. Penalties: Fines; Loss of Goods; Judgment of Felony, without Clergy. 3. FRAUDULENT BANKRUPTCY. Penalty: Judgment of Felony, without Clergy. 4. USURY. Penalty: Fine, and Imprisonment. 5. CHEATING. Penalties: Fine; Imprisonment; Pillory; Tumbrel; Whipping, or other corporal Punishment; Transportation. 6. FORESTALLING. 7. REGRATING. 8. ENGROSSING.—Penalties, for all three: Loss of Goods; Fine; Imprisonment; Pillory. 9. MONOPOLIES, and COMBINATIONS to raise the Price of Commodities. Penalties: Fines; Imprisonment; Pillory; Loss of Ear; Infamy; and, sometimes, the Pains of *Praemunire*. 10. Exercising a TRADE, not having served as Apprentice. Penalty; Fine. 11. Transporting, or Residing abroad, of ARTIFICERS. Penalties: Fine; Imprisonment; Forfeiture; Incapacity; Becoming Aliens.

C

CHAP.

C H A P. XIII.

*Of OFFENCES against the public HEALTH,  
and the public POLICE or OECONOMY.*

1.

**O**ffences, against the public HEALTH, are,  
1. IRREGULARITY, in time of the PLAGUE,  
or of QUARENTINE. Penalties: Whipping; Judg-  
ment of Felony, with and without Clergy. 2. Sel-  
ling UNWHOLESOME PROVISIONS. Penalties: A-  
mercement; Pillory; Fine; Imprisonment; Ab-  
juration of the Town.

2.

Offences against the public POLICE and OECONOMY, or domestic Order of the Kingdom, are,  
1. Those relating to CLANDESTINE and IRREGU-  
LAR MARRIAGES. Penalties: Judgment of Fe-  
lony, with and without Clergy. 2. BIGAMY, or  
(more properly) POLYGAMY. Penalty: Judgment  
of Felony. 3. WANDERING, by SOLDIERS or  
MARINERS. 4. REMAINING in ENGLAND, by  
EGYPTIANS; or being in their FELLOWSHIP one  
Month. Both these are Felonies, without Clergy.  
5. COMMON NUSANCES, 1st, by Annoyances or  
Purprestures in Highways, Bridges, and Rivers;  
2dly, by offensive Trades and Manufactures; 3dly,  
by disorderly Houses; 4thly, by Lotteries; 5thly,  
by

by Cottages ; 6thly, by Fireworks ; 7thly, by Evesdropping. — Penalty, in all: Fine. — 8thly, by common Scolding. Penalty: The cucking Stool. 6. IDLENESS, DISORDER, VAGRANCY, and INCORRIGIBLE ROGUERY. Penalties: Imprisonment; Whipping; Judgment of Felony. 7. LUXURY, in Diet. Penalty: Discretionary. 8. GAMING. Penalties: To Gentlemen, Fines; to others, Fine and Imprisonment; to cheating Gamesters, Fine, Infamy, and the corporal Pains of Perjury. 9. DESTROYING the GAME. Penalties: Fines; and corporal Punishment.

## CHAP. XIV.

### *Of* HOMICIDE.

#### I.

**C**Rimes, especially affecting INDIVIDUALS, are,  
1. Against their PERSONS. 2. Against their HABITATIONS. 3. Against their PROPERTY.

#### 2.

Crimes against the PERSONS of Individuals, are,  
1. By HOMICIDE, or Destroying Life. 2. By other CORPORAL Injuries.

#### 3.

HOMICIDE is, 1. JUSTIFIABLE. 2. EXCUSABLE.  
3. FELONIOUS.

#### 4. Homicide

4.

Homicide is JUSTIFIABLE, 1. By Necessity, and Command of Law. 2. By Permission of Law; 1st; for the Furtherance of public Justice; 2dly, for Prevention of some forcible Felony.

5.

Homicide is EXCUSABLE, 1. *Per Infortunium*, or by Mis-adventure. 2. *Se defendendo*, or in Self-Defence, by Chance-medley. Penalty, in both: Forfeiture of Goods; which however is pardoned of course.

6.

FELONIOUS Homicide is the Killing of a human Creature without Justification or Excuse. This is, 1. Killing ONE'S SELF. 2. Killing ANOTHER.

7.

Killing ONE'S SELF, or SELF-MURDER, is where one deliberately, or by any unlawful malicious Act, puts an End to his own Life. This is Felony; punished by ignominious Burial, and Forfeiture of Goods and Chattels.

8.

Killing ANOTHER is, 1. MANSLAUGHTER. 2. MURDER.

9.

MANSLAUGHTER is the unlawful Killing of another; without Malice, express or implied. This is either, 1. Voluntary, upon a sudden Heat. 2. Involuntary, in the Commission of some unlawful Act. Both are Felony, but within Clergy; except in the Case of STABBING.

#### 10. MURDER

## 10.

MURDER is when a Person, of sound Memory and Discretion, unlawfully killeth any reasonable Creature, in Being, and under the King's Peace ; with Malice aforethought, either exprefs or implied. This is Felony, without Clergy ; punished with speedy Death, and Hanging in Chains, or Dissection.

## 11.

PETIT TREASON (being an aggravated Degree of MURDER) is where the Servant kills his Master, the Wife her Husband, or the Ecclesiastic his Superior. Penalty: In Men, to be drawn, and hanged ; in Women, to be drawn, and burned.

## CHAP. XV.

*Of OFFENCES against the PERSONS of*  
INDIVIDUALS.

## 1.

CRIMES affecting the PERSONS of Individuals, by other corporal Injuries not amounting to Homicide, are, 1. MAYHEM ; and also SHOOTING at another. Penalties: Fine; Imprisonment ; Judgment of Felony, without Clergy. 2. Forcible ABDUCTION, and MARRIAGE or DEFILEMENT, of an Heiress ; which is Felony : Also, STEALING, and

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and DEFLOWERING or MARRYING, any Woman-Child under the Age of SIXTEEN Years; for which the Penalty is Imprisonment, Fine, and temporary Forfeiture of her Lands. 3. RAPE; and also CARNAL KNOWLEDGE of a Woman-Child under the Age of TEN Years. 4. BUGGERY, with Man or Beast. — Both these are Felonies, without Clergy. 5. ASSAULT. 6. BATTERY; especially of Clergymen. 7. WOUNDING. Penalties, in all three: Fine; Imprisonment; and other corporal Punishment. 8. FALSE IMPRISONMENT. Penalties: Fine; Imprisonment; and (in some atrocious Cases) the Pains of *Praemunire*, and Incapacity of Office or Pardon. 9. KIDNAPPING, or, forcibly Stealing away the King's Subjects. Penalty: Fine; Imprisonment; and Pillory.

## CHAP. XVI.

### *Of OFFENCES against the HABITATIONS of Individuals.*

#### 1.

CRimes, affecting the HABITATION of Individuals, are, 1. ARSON. 2. BURGLARY.

#### 2.

ARSON is the malicious and wilful Burning of the House; or Outhouse, of another Man. This



is Felony ; in some cases within, in others without, Clergy.

3.

BURGLARY is the Breaking and Entering, by Night, into a Mansion-House ; with Intent to commit a Felony. This is Felony, without Clergy.

## CHAP. XVII.

### *Of OFFENCES against private PROPERTY.*

1.

Crimes, affecting the private PROPERTY of Individuals, are, 1. LARCINY. 2. Malicious MISCHIEF. 3. FORGERY.

2.

LARCINY is, 1. SIMPLE. 2. MIXED, or COM-  
POUND.

3.

SIMPLE Larciny is the felonious Taking, and Carrying away, of the personal Goods of another. And it is, 1. GRAND Larciny ; being above the Value of twelve Pence. Which is Felony ; in some cases within, in others without, Clergy. 2. PETIT Larciny ; to the Value of twelve Pence or under. Which is also Felony, but not capital ; being punished with Whipping, or Transportation.

4. MIXED,

4.

**MIXED, or COMPOUND, Larciny** is that wherein the Taking is accompanied with the Aggravation of being, 1. From the House. 2. From the Person.

5.

Larcinies from the House, by Day or Night, are Felonies without Clergy, when they are, 1. Larcinies, above **TWELVE PENCE**, from a Church ; — or by breaking a Tent or Booth in a Market or Fair, by Day or Night, the Owner or his Family being therein ; — or by breaking a Dwellinghouse by Day, any Person being therein ; — or from a Dwellinghouse by Day, without breaking, any person therein being put in Fear ; — or from a Dwellinghouse by Night, without breaking, the Owner or his Family being therein and put in Fear; 2. Larcinies, of **FIVE SHILLINGS**, by breaking the Dwellinghouse, Shop, or Warehouse, by Day, though no person be therein ; — or, by privately stealing in any Shop, Warehouse, Coachhouse, or Stable, by Day or Night, without breaking, and though no Person be therein. 3. Larcinies, of **FORTY SHILLINGS**, from a Dwellinghouse or it's Outhouses, without breaking, and though no Person be therein.

6.

Larciny from the Person is, 1. By **PRIVATELY STEALING**, from the Person of another, above the Value of twelve Pence. 2. By **ROBBERY** ; or the felonious and forcible Taking, from the Person of another, in or near the Highway, Goods or Money  
of

of any Value, by Putting him in Fear. These are, both, Felonies without Clergy. An Attempt to rob is also Felony.

7.

Malicious MISCHIEF, by Destroying Dikes, Goods, Cattel, Ships, Garments, Fishponds, Trees, Woods, Churches, Chapels, Meetinghouses, Houses, Outhouses, Corn, Hay, Straw, Sea or River Banks, Hopbinds, Coalmines, (or Engines thereunto belonging) or any Fences for Inclosures by Act of Parliament, is Felony; and, in most cases, without Benefit of Clergy.

8.

FORGERY is the fraudulent Making or Alteration of a Writing, in prejudice of another's Right. Penalties: Fine; Imprisonment; Pillory; Loss of Nose and Ears; Forfeiture; Judgment of Felony, without Clergy.

C H A P.

C H A P. XVIII.

*Of the Means of PREVENTING Offences.*

1.

**C**Rimes and Misdemeanors may be PREVENTED, by Compelling suspected Persons to give SECURITY: Which is effected by binding them in a conditional Recognizance to the King, taken in Court, or by a Magistrate.

2.

These Recognizances may be conditioned, 1. To keep the PEACE. 2. To be of the GOOD BEHAVIOUR.

3.

They may be taken by any Justice or Conservator of the Peace, at his own Discretion; or, at the Request of such as are intitled to demand the same.

4.

All Persons, who have given sufficient Cause to apprehend an intended Breach of the Peace, may be bound over to keep the PEACE; and all those, that be not of good Fame, may be bound to the GOOD BEHAVIOUR; and may, upon Refusal in either case, be committed to Gaol.

C H A P. XIX.

*Of COURTS of a CRIMINAL Jurisdiction.*

I.

**I**N the Method of PUNISHMENT may be considered, 1. The several COURTS of criminal Jurisdiction. 2. The several PROCEEDINGS therein.

2.

The criminal COURTS are; 1. Those of a PUBLIC and general Jurisdiction throughout the Realm. 2. Those of a PRIVATE and special Jurisdiction.

3.

PUBLIC criminal Courts are, 1. The high Court of Parliament; which proceeds by Impeachment. 2. The Court of the Lord high Steward; and the Court of the King in full Parliament: for the Trial of capitally indicted Peers. 3. The Court of King's Bench. 4. The Court of Chivalry. 5. The Court of Admiralty, under the King's Commission. 6. The Courts of Oyer and Terminer, and general Gaol-delivery. 7. The Court of Quarter-Sessions of the Peace. 8. The Sheriff's Tourn. 9. The Court Lect. 10. The Court of the Coroner. 11. The Court of the Clerk of the Market.

4.

PRIVATE criminal Courts are, 1. The Court of the Lord Steward, &c. by Statute of HENRY VII. 2. The Court of the Lord Steward, &c. by Statute of HENRY VIII. 3. The University Courts.

C H A P.

C H A P. XX.

*Of SUMMARY Convictions.*

I.

**P**ROCEEDINGS in criminal Courts are, 1. SUMMARY. 2. REGULAR.

2.

SUMMARY Proceedings are such, whereby a Man may be convicted of divers Offences, without any formal Process or Jury, at the Discretion of the Judge or Judges appointed by Act of Parliament, or common Law.

3.

Such are, 1. Trials of Offences and Frauds against the Laws of EXCISE and other Branches of the King's REVENUE. 2. Convictions before JUSTICES of the PEACE upon a Variety of minute Offences, chiefly against the public Police. 3. ATTACHMENTS for Contempts to the superior Courts of Justice.

## C H A P. XXI.

*Of* ARRESTS.

1.

**R**EGULAR Proceedings, in the Courts of common Law, are, 1. ARREST. 2. COMMITMENT and BAIL. 3. PROSECUTION. 4. PROCESS. 5. ARRAIGNMENT, and it's Incidents. 6. PLEA and ISSUE. 7. TRIAL and CONVICTION. 8. CLERGY. 9. JUDGMENT, and it's Consequences. 10. REVERSAL of Judgment. 11. REPRIEVE or PARDON. 12. EXECUTION.

2.

An ARREST is the Apprehending, or Restraining, of one's Person ; in order to be forthcoming to answer a Crime, whereof one is accused or suspected.

3.

This may be done, 1. By Warrant. 2. By an Officer, without Warrant. 3. By a private Person, without Warrant. 4. By Hue and Cry.

C H A P.

C H A P. XXII.

*Of COMMITMENT and BAIL.*

1.

**C**OMMITMENT is the Confinement of one's Person in Prison, for safe Custody, by Warrant from proper Authority; unless, in bailable Offences, he puts in sufficient BAIL, or Security for his future Appearance.

2.

The Magistrate is bound to take reasonable Bail, if offered; unless the Offender be not bailable.

3.

Such are, 1. Persons accused of Treason; or, 2. Of Murder; or, 3. Of Manslaughter, by Indictment; or if the Prisoner was clearly the Slayer. 4. Prison-breakers, when committed for Felony. 5. Outlaws. 6. Those who have abjured the Realm. 7. Approvers, and Appellees. 8. Persons taken with the Mainour. 9. Persons accused of Arson. 10. Excommunicated Persons.

4.

The Magistrate may, at his Discretion, admit to Bail, or otherwise, Persons not of good Fame, charged with other Felonies, whether as Principals or as Accessories.

K 2

5. If



5.

If they be of good Fame, he is bound to admit them to Bail.

6.

The Court of King's Bench, or it's Judges in time of Vacation, may bail in any Case whatsoever.

### C H A P. XXIII.

#### *Of the several Modes of PROSECUTION.*

1.

**P**ROSECUTION, or the Manner of accusing Offenders, is either by a previous Finding of a grand Jury, as, 1. By PRESENTMENT. 2. By INDICTMENT. Or, without such Finding. 3. By INFORMATION. 4. By APPEAL.

2.

A PRESENTMENT is the Notice taken by a grand Jury of any Offence, from their own Knowledge or Observation.

3.

AN INDICTMENT<sup>r</sup> is a written Accusation of one or more Persons of a Crime or Misdemeanor, preferred to, and presented on Oath by, a grand Jury; expressing, with sufficient Certainty, the Person, Time, Place, and Offence.

<sup>r</sup> See APPENDIX, No. XI. §. 1.

4.

AN INFORMATION is, 1. At the Suit of the King and a Subject, upon penal Statutes. 2. At the Suit of the King only. Either, 1. Filed by the Attorney-general *ex officio*, for such Misdemeanors as affect the King's Person or Government: or, 2. Filed by the Master of the Crown-Office (with Leave of the Court of King's Bench) at the Relation of some private Subject, for other gross and notorious Misdemeanors. All differing from Indictments in this; that they are exhibited by the Informer, or the King's Officer; and not on the Oath of a grand Jury.

5.

AN APPEAL is an Accusation or Suit, brought by one private Subject against another, for Larceny, Rape, Mayhem, Arson, or Homicide; which the King cannot discharge or pardon, but the Party alone can release.

## CHAP. XXIV.

Of PROCESS *upon an* INDICTMENT.

## I.

PROCESS to bring in an Offender, when indicted in his Absence, is, in Misdemeanors, by *Venire facias*, Distress infinite, and *Capias*; in capital Crimes, by *Capias*<sup>2</sup> only: and, in both, by Outlawry.

## 2.

During this Stage of Proceedings, the Indictment may be removed into the Court of King's Bench from any inferior Jurisdiction, by Writ of *Certiorari facias*: and Cognizance must be claimed in Places of exclusive Jurisdiction.

## CHAP. XXV.

Of ARRAIGNMENT, *and it's Incidents.*

## I.

ARRAIGNMENT<sup>2</sup> is the Calling of the Prisoner to the Bar of the Court, to answer the Matter of the Indictment.

<sup>2</sup> See APPENDIX, No. XI, §. I.

## 2. Incident

2.

Incident hereunto are, 1. The Standing mute of the Prisoner; for which, in petit Treason, and Felonies of Death, he shall undergo the *Peine fort & dure*. 2. His Confession; which is either SIMPLE; or by way of APPROVEMENT.

C H A P. XXVI.

*Of* PLEA, *and* ISSUE.

1.

**T**HE PLEA, or defensive Matter alleged by the Prisoner, may be, 1. A Plea to the Jurisdiction. 2. A Demurrer in point of Law. 3. A Plea in Abatement. 4. A special Plea in Bar; which is, 1st, *Auterfoits acquit*; 2dly, *Auterfoits convict*; 3dly, *Auterfoits attain*; 4thly, a Pardon. 5. The general Issue, Not guilty<sup>b</sup>.

2.

Hereupon ISSUE is joined by the Clerk of the Arraignment, on behalf of the King.

<sup>a</sup> See APPENDIX, No. XL §. 1.

C H A P.

## CHAP. XXVII.

## Of TRIAL, and CONVICTION.

## 1.

TRIALS of Offences, by the Laws of ENGLAND, were and are, 1. By ORDEAL, of either Fire or Water. 2. By the CORSNED. Both these have been long abolished. 3. By BATTEL, in Appeals and Approvers. 4. By the PEERS of GREAT-BRITAIN. 5. By JURY.

## 2.

The Method and Process of Trial by JURY is, 1. The Impanelling of the Jury. 2. Challenges; 1st, for Cause; 2dly, peremptory. 3. *Tales de circumstantibus*. 4. The Oath of the Jury. 5. The Evidence. 6. The Verdict, either general or special.

## 3.

CONVICTION is when the Prisoner pleads, or is found, guilty: Whereupon, in Felonies, the Prosecutor is intitled to, 1. His Expenses. 2. Restitution of his Goods.

c See APPENDIX, No. XI. §. 1.

C H A P. XXVIII.

*Of the Benefit of CLERGY.*

I.

**C**LERGY<sup>d</sup>, or the Benefit thereof, was originally derived from the usurped Jurisdiction of the popish Ecclesiastics; but hath since been new modelled by several Statutes.

2.

It is an Exemption of the Clergy from any other secular Punishment for Felony, than Imprisonment for a Year, at the Court's Discretion; and it is extended likewise, absolutely, to lay Peers, for the first Offence; and to all lay Commoners, for the first Offence also, upon condition of Branding, Imprisonment, or Transportation.

3.

All Felonies are intitled to the Benefit of Clergy, except such as are now ousted by particular Statutes.

4.

Felons, on receiving the Benefit of Clergy, (though they forfeit their Goods to the Crown,) are discharged of all clergyable Felonies before committed, and restored in all Capacities and Credits.

<sup>d</sup> See APPENDIX, No. XL §. 2.

## CHAP. XXIX.

*Of JUDGMENT, and it's Consequences.*

I.

**J**UDGMENT\* (unless any Matter be offered in Arrest thereof) follows upon Conviction; being the Pronouncing of that Punishment which is expressly ordained by Law.

2.

ATTAINDER of a Criminal is the immediate Consequence, 1. Of having Judgment of Death pronounced upon him. 2. Of Outlawry for a capital Offence.

3.

The Consequences of Attainder are, 1. FORFEITURE to the King. 2. CORRUPTION of BLOOD.

4.

FORFEITURE to the King is, 1. Of real Estates, upon Attainder;—in high Treason, absolutely, till the Death of the late Pretender's Sons;—in Felonies, for the King's Year, Day, and Waste; in Misprision of Treason, Assaults on a Judge, or Battery sitting the Courts; during the Life of the Offender. 2. Of personal Estates, upon Conviction; in all Treason, Misprision of Treason, Felony, excusable Homicide, petit Larciny, Standing mute upon Arraignment, the above-named Contempts of the King's Courts, and Flight.

\* See APPENDIX, No. XI. §. 1, and 2.

5. COR-

5.

CORRUPTION of BLOOD is an utter Extinction of all inheritable Quality therein; So that, after the King's Forfeiture is first satisfied, the Criminal's Lands escheat to the Lord of the Fee; and he can never afterwards inherit, be inherited, or have any Inheritance derived through him.

C H A P. XXX.

*Of REVERSAL of JUDGMENT.*

1.

Judgments, and their Consequences, may be AVOIDED, 1. By FALSIFYING, OR REVERSING, the Attainder. 2. By REPRIEVE, OR PARDON.

2.

Attainders may be FALSIFIED, OR REVERSED, 1. Without a Writ of Error; for Matter *dehors* the Record. 2. By Writ of Error; for Mistakes in the Judgment, or Record. 3. By Act of Parliament; for Favour.

3.

When an OUTLAWRY is reversed, the Party is restored to the same Plight, as if he had appeared upon the *Capias*. When a JUDGMENT, on Conviction, is reversed, the Party stands as if never accused.



## C H A P. XXXI.

## Of REPRIEVE and PARDON.

## I.

A REPRIEVE is a temporary Suspension of the Judgment, 1. *Ex Arbitrio Judicis*. 2. *Ex Necessitate Legis*; for Pregnancy, Insanity, or the Trial of Identity of Person, which must always be tried *instante*†.

## 2.

A PARDON is a permanent Avoyer of the Judgment by the King's Majesty, in Offences against his Crown and Dignity; drawn in due Form of Law, allowed in open Court, and thereby making the Offender a new Man.

## 3.

The King cannot pardon, 1. Imprisonment of the Subject beyond the Seas. 2. Offences prosecuted by Appeal. 3. Common Nuisances. 4. Offences against popular or penal Statutes, after Information brought by a Subject. Nor is his Pardon pleadable to an Impeachment by the Commons in Parliament.

† See APPENDIX, No. XL. §. 3.

CHAP. XXXII.

*Of* EXECUTION.

1.

**E**XECUTION is the Completion of human Punishment, and must be strictly performed in the Manner which the Law directs.

2.

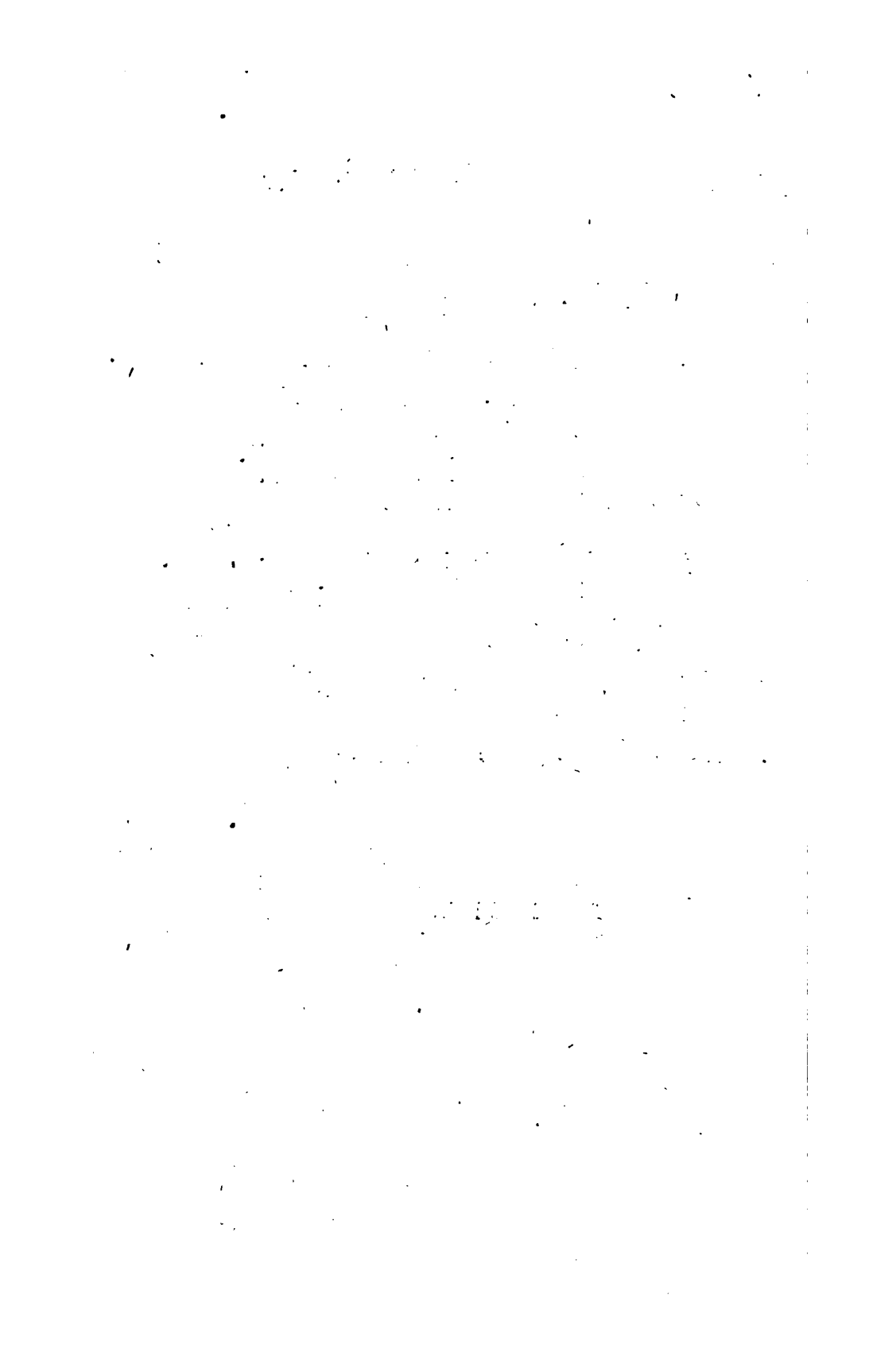
The Warrant for Execution is sometimes under the Hand and Seal of the Judge<sup>r</sup>; sometimes by Writ from the King<sup>h</sup>; sometimes by Rule of Court<sup>i</sup>; but commonly by the Judge's signing the Calendar of Prisoners, with their separate Judgments in the Margin.

<sup>r</sup> See APPENDIX, No. XI. §. 4.

<sup>h</sup> *Ibid.* §. 5.

<sup>i</sup> *Ibid.* §. 3.

THE END.





# APPENDIX.





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## A P P E N D I X.

### No. I.

#### *Explanation of the TABLE of CON- SANGUINITY.*

**F**OR the better understanding of the annexed TABLE of CONSANGUINITY, it may be proper to observe, that CONSANGUINITY is twofold; LINEAL and COLLATERAL.

No.I.

IN LINEAL CONSANGUINITY every Generation makes a different Degree; as is sufficiently obvious upon mere Inspection of the TABLE. And this, being the only natural Way of reckoning the Degrees in the direct Line, obtains universally in the civil, canon, and common Laws.

WITH regard to COLLATERAL CONSANGUINITY, there are two Ways of reckoning the Degrees of it. The Civilians, in order to settle the Degree of Kindred between two Persons, count UPWARDS from either of them to the common Stock or Ancestor, from whom both are descended; and then DOWNWARDS again to the other; reckoning a Degree for each Person, both ascending and descending. The canon Law, with which the common Law of ENGLAND agrees, begins from the common Ancestor, and reckons only DOWNWARDS; and in what Degree the two Persons, or the most remote of them, are distant from the common Ancestor, that is the Degree in which they are distant from each other.



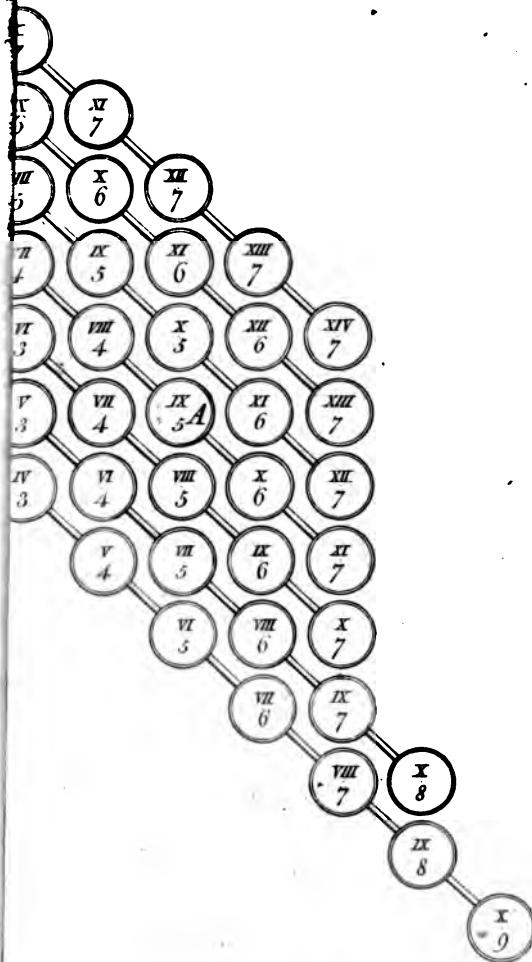
## No. I.

IN this TABLE, (which is no other than the *Arbor Consanguinitatis* usually printed with the Bodies of civil and canon Law,) all the collateral Degrees are expressed, to the TENTH of the Civilians, and the SEVENTH of the Canonists, inclusive; the former being distinguished by the Roman Numerals, the latter by the common Figures.

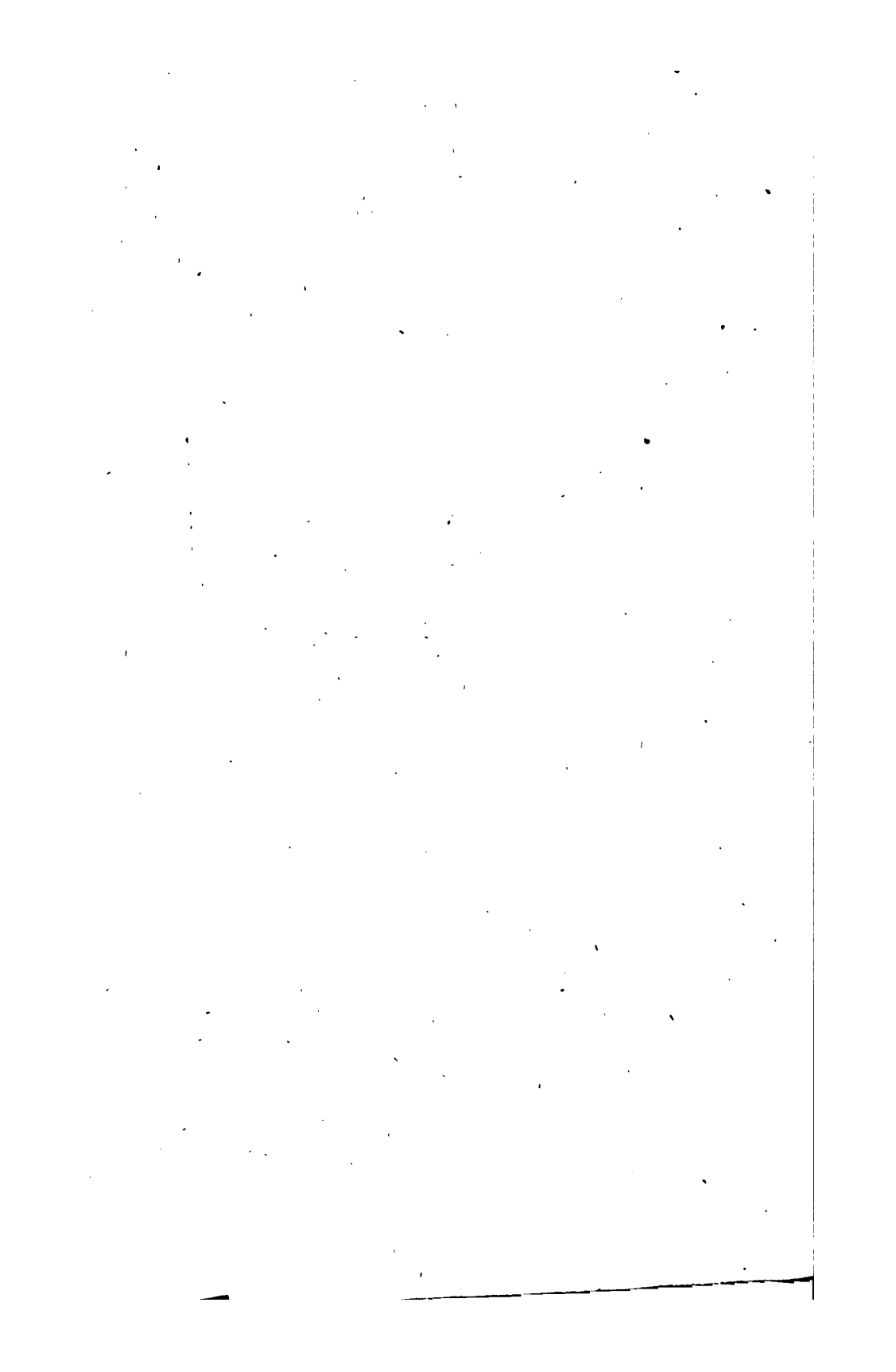
If, for Instance, it be enquired, in what Degree the Person marked A is related to the PROPOSITUS, by the civil Computation; we must count from the PROPOSITUS, upwards, to the *Abavus*, FOUR; then, downwards, from the *Abavus* to A, the Person enquired after, FIVE more; in the Whole, NINE: So that he is related to the PROPOSITUS in the NINTH Degree, by the civil Law.

ACCORDING to the Canonists, and common Lawyers, we must begin counting downwards; from the *Abavus* to the PROPOSITUS, FOUR; then again from the *Abavus* to A, FIVE: Which being the greater Number of the two, the FIFTH is therefore the Degree in which, by this computation, A and the PROPOSITUS are of Kin to each other.

# Table of CONSANGUINITY.



To front page 154



No. II.

*Explanation of the TABLE of DESCENTS.*

THE TABLE of DESCENTS is intended to exhibit, to the Eye of the Student, the successive Order, in which he must search for the Heir of a Person (as JOHN STILES) who dies seised of an Estate in Fee simple.

No. II.

IF such Estate came to him by his own Acquisition, or PURCHASE, and not by Descent from any of his Ancestors; then in the first place succeeds the eldest Son, *Matthew Stiles*, or his Issue: (No. 1.) If his Line be extinct, then *Gilbert Stiles* and the other Sons, respectively, in Order of Birth, or their Issue: (No. 2.) In Default of these, ALL the Daughters together, *Margaret* and *Charlotte Stiles*, or their Issue: (No. 3.)—On Failure of the Descendants of JOHN STILES himself, the Issue of *Geoffery* and *Lucy Stiles*, his Parents, is called in: viz. First, *Francis Stiles*, the eldest Brother of the whole Blood, or his Issue: (No. 4.) Then *Oliver Stiles*, and the other whole Brothers, respectively, in Order of Birth, or their Issue: (No. 5.) Then the Sisters of the whole Blood, ALL together, *Bridget* and *Alice Stiles*, or their Issue. (No. 6.)—In Defect of these, the Issue of *George* and *Cecilia Stiles*, his Father's Parents; Respect being still had to their Age and Sex: (No. 7.) Then the Issue of *Walter* and *Christian Stiles*, the Parents of his paternal Grandfather: (No. 8.) Then the Issue of *Richard* and *Anne Stiles*, the Parents of his paternal Grandfather's Father: (No. 9.) And so on in the paternal Grandfather's paternal Line, or Blood of *Walter Stiles*, in infinitum.—in Defect of these, the Issue of *William* and *Jane Smith*, the Parents of his paternal Grandfather's Mother: (No. 10.) And so on in the paternal Grandfather's maternal Line, or Blood of *Christian Smith*, in infinitum; till both the immediate Bloods of *George Stiles*, the paternal Grandfather, are spent. — Then we must resort to the Issue of *Luke* and *Francis Kempe*, the Parents of JOHN STILES's paternal Grandmother: (No. 11.) Then to the Issue of *Thomas* and *Sarah Kempe*, the Parents of his paternal Grandmother's Father: (No. 12.) And so on in the paternal

Grand-

## No. II.

Grandmother's paternal Line, or Blood of *Luke Kempe*, in infinitum. — In default of which, we must call it the Issue of *Charles* and *Mary Holland*, the Parents of his paternal Grandmother's Mother: (No. 13.) And so on in the paternal Grandmother's maternal Line, or Blood of *Frances Holland*, in infinitum; till both the immediate Bloods of *Cecilia Kempe*, the paternal Grandmother, are also spent. — Whereby the PATERNAL Blood of *JOHN STILES* entirely failing, Recourse must then, and not before, be had to his MATERNAL Relations; or the Blood of the *Bakers*, (No. 14, 15, 16.) *Willis's*, (No. 17.) *Thorpes*, (No. 18, 19.) and *Whites*, (No. 20.) in the same regular successive Order as in the paternal Line.

IN case *JOHN STILES* was not himself the PURCHASOR but the Estate in fact came to him by DESCENT from his Father, Mother, or any higher Ancestor, there is the Difference; that the Blood of that Line of Ancestors from which it did not descend, can never inherit; but the Estate shall rather escheat to the Lord of the Fee. Thus if it descended from *Geoffrey Stiles*, the Father, the Blood of *Lucy Baker*, the Mother, is perpetually excluded. And so, *vice versa*, if it descended from *Lucy Baker*, it cannot descend to the Blood of *Geoffrey Stiles*. This, in either case, cuts off one half of the TABLE from Succession: And further, if it can be shewn to have descended from *George Stiles*, this cuts off three fourths; for now the Blood not only of *Lucy Baker*, but also of *Cecilia Kempe*, is excluded. If, lastly, it descended from *Walter Stiles*, this narrows the succession still more, and cuts off seven eights of the TABLE; for now, neither the Blood of *Lucy Baker*, nor of *Cecilia Kempe*, nor of *Christian Smith*, can ever succeed to the Inheritance. And the like Rule will hold upon Descents from any other Ancestors.

PAT

THE  
LAW  
OFFICE  
OF  
JAMES  
M. HARRIS

NEW YORK

1911

1912

1913

1914

1915

1916

1917

1918

1919

1920

1921

1922

1923

1924

1925

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1928

1929

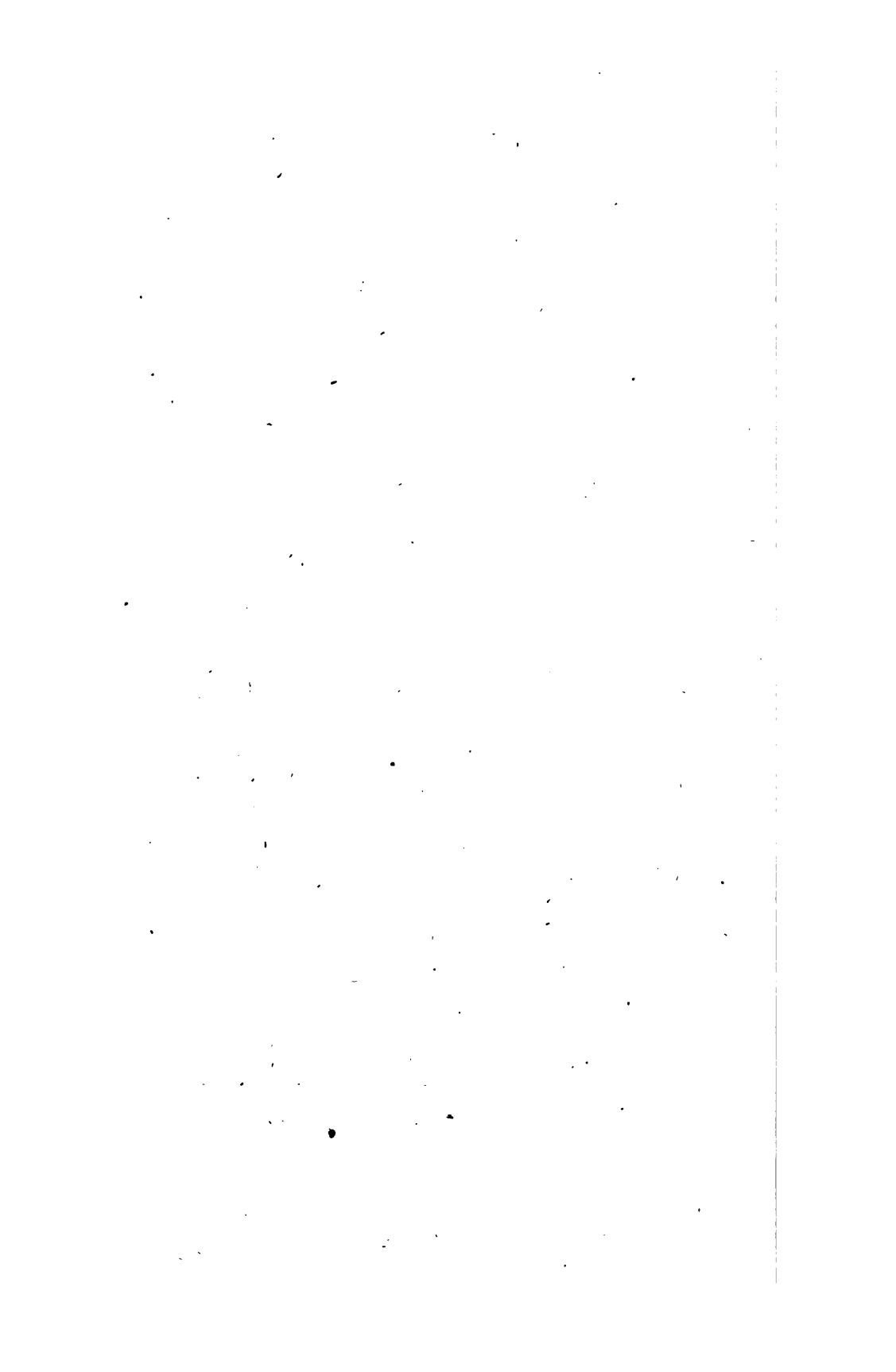
1930

1931

1932

1933

1934



## No. III.

No. III.

*Vetus Carta FEOFFAMENTI.*

**S**CIANT presentes & futuri, quod ego *Willielmus*, filius *Premises*.  
*Willielmi de Segenbo*, dedi, concessi, & hac presenti  
 carta mea confirmavi, *Johanni* quondam filio *Johannis de*  
*Saleford*, pro quadam summa pecunie quam michi dedit  
 pre manibus, unam acram terre mee arabilis, jacentem  
 in campo de *Saleford*, juxta terram quondam *Richardi de*  
*la Mare*: **Habendam & Tenendam** totam predictam  
 acram terre, cum omnibus ejus pertinentiis, prefato *Jo-*  
*banni*, & heredibus suis, & suis assignatis, de capitalibus  
 dominis feodi: **Reddendo** & faciendo annuatim eisdem  
 dominis capitalibus servitia inde debita & consueta: **Et**  
 ego predictus *Willielmus*, & heredes mei, & mei assignati,  
 totam predictam acram terre, cum omnibus suis pertinen-  
 tiis, predicto *Johanni de Saleford*, & heredibus suis, &  
 suis assignatis, contra omnes gentes warrantizabimus in  
 perpetuum. **In cujus** rei testimonium huic presenti car-  
 te sigillum meum apposui: **Hij** testibus, *Nigello de Sale-*  
*ford*, *Johanne de Seybroke*, *Radulpho* clerico de *Saleford*,  
*Johanne* molendario de eadem villa, & aliis. **Data** apud  
*Saleford* die *Veneris* proximo ante festum sancte *Marga-*  
*rete* virginis, anno regni regis *EDWARDI* filii regis *ED-*  
*WARDI* sexto.

*Habendum, and*  
*Tenendum.**Reddendum.*  
*Warranty.**Conclusion.*

(L. S)

**M**emorandum, quod die & anno  
 infrascriptis plena & pacifica seifina acre  
 infraspacificate, cum pertinentiis, data  
 & deliberata fuit per infranominatum  
*Willielmum de Segenbo* infranominato  
*Johanni de Saleford*, in propriis perso-  
 nis suis, secundum tenorem & effectum  
 carte infrascripte, in presentia *Nigelli*  
 de *Saleford*, *Johannis de Seybroke*, &  
 aliorum.

*Livery of Seisin*  
*endorsed.*

No. IV.



No. IV.

No. IV.

*A modern Conveyance by LEASE and RELEASE.*

## §. I. LEASE, or BARGAIN and SALE, for a Year.

|                   |   |
|-------------------|---|
| Premises.         | <p><b>T</b>his Indenture, made the third Day of September, in the twenty first Year of the Reign of our sovereign Lord GEORGE the second by the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and forty seven, between Abraham Barker of Dale Hall in the County of Norfolk, Esquire, and Cecilia his Wife, of the one Part, and David Edwards of Lincoln's Inn in the County of Middlesex, Esquire, and Francis Golding of the city of Norwich, Clerk, of the other Part, witnesseth; that the said Abraham Barker and Cecilia his Wife, in Consideration of five Shillings of lawful Money of Great Britain to them in Hand paid by the said David Edwards and Francis Golding at or before the Enfeoffing and Delivery of these Presents, (the Receipt whereof is hereby acknowledged,) and for other good Causes and Considerations them the said Abraham Barker and Cecilia his Wife hereunto specially moving, have bargained and sold, and by these Presents do, and each of them doth, bargain and sell, unto the said David Edwards and Francis Golding, their Executors, Administrators, and Assigns, <del>But</del> that the capital Messuage, called Dale Hall in the Parish of Dale in the said County of Norfolk, wherein the said Abraham Barker and Cecilia his Wife now dwell, and all those their Lands in the said Parish of Dale called or known by the Name of Wilson's Farm, containing by Estimation five hundred and forty Acres, be the same more or less, together with all and singular Houses, Dovehouses, Barns, Buildings, Stables, Yards, Gardens, Orchards, Lands, Tenements, Meadows, Pastures, Feedings, Commons, Woods, Underwoods, Ways, Waters, Watercourses, Fishings, Privileges, Profits, Easements, Commodities, Advantages, Emoluments, Hereditaments, and Appurtenances whatsoever to the said capital Messuage and</p> |
| Parties,          |   |
| Consideration.    |   |
| Bargain and Sale. |   |
| Parcels.          |   |

and Farm belonging or appertaining, or with the same used or enjoyed, or accepted, reputed, taken, or known, as Part, Parcel, or Member thereof, or as belonging to the same or any part thereof; and the Reversion and Reversions, Remainder and Remainders, yearly and other Rents, Issues, and Profits thereof, and of every Part and Parcel thereof: **To have and to hold** the said capital *Habendum.* Messuage, Lands, Tenements, Hereditaments, and all and singular other the Premises herein before mentioned or intended to be bargained and sold, and every part and Parcel thereof, with their and every of their Rights, Members, and Appurtenances, unto the said *David Edwards* and *Francis Golding*, their Executors, Administrators, and Assigns, from the Day next before the Day of the Date of these Presents, for and during, and unto the full End and Term of, one whole Year from thence next ensuing and fully to be complete and ended: **Yielding** *Reddendum.* and paying therefore unto the said *Abraham Barker*, and *Cecilia* his Wife, and their Heirs or Assigns, the yearly Rent of one Pepper-Corn at the Expiration of the said Term, if the same shall be lawfully demanded: **To the** *Intent.* Intent and Purpose, that by Virtue of these Presents, and of the Statute for transferring Uses into Possession, the said *David Edwards* and *Francis Golding* may be in the actual Possession of the Premises, and be thereby enabled to take and accept a Grant and Release of the Freehold, Reversion, and Inheritance of the same Premises, and of every Part and Parcel thereof, to them, their Heirs, and Assigns; to the Uses, and upon the Trusts, thereof to be declared by another Indenture, intended to bear Date the Day next after the Day of the Date hereof. **In witness** whereof the Parties to these Presents their *Conclusion.* Hands and Seals have subscribed and set, the Day and Year first abovewritten.

Scaled, and delivered, being  
first duly stamped, in the  
presence of  
*George Carter.*  
*William Browne.*

*Abraham Barker.* (L. S.)  
*Cecilia Barker.* (L. S.)  
*David Edwards.* (L. S.)  
*Francis Golding.* (L. S.)

## No. IV.

## §. 2. Deed of RELEASE.

Premises.

Parties.

Recital.

Consideration.

**This Indenture** of five Parts, made the fourth Day of *September*, in the twenty first Year of the Reign of our sovereign Lord *GEORGE* the second by the Grace of God King of *Great Britain, France, and Ireland*, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and forty seven, between *Abraham Barker* of *Dale Hall* in the County of *Norfolk*, Esquire, and *Cecilia* his Wife, of the first Part; *David Edwards* of *Lincoln's Inn* in the County of *Middlesex*, Esquire, Executor of the last Will and Testament of *Lewis Edwards*, of *Cowbridge* in the county of *Glamorgan*, Gentleman, his late Father, deceased, and *Francis Golding* of the City of *Norwich*, Clerk, of the second Part; *Charles Browne* of *Enstone* in the County of *Oxford*, Gentleman, and *Richard More* of the City of *Bristol*, Merchant, of the third Part; *John Barker*, Esquire, Son and Heir apparent of the said *Abraham Barker*, of the fourth Part; and *Katherine Edwards*, Spinster, one of the Sisters of the said *David Edwards*, of the fifth Part. **Whereas** a Marriage is intended, by the Permission of God, to be shortly had and solemnized between the said *John Barker* and *Katherine Edwards*: **Now this Indenture witnesseth**, that in Consideration of the said intended Marriage, and of the Sum of five thousand Pounds, of good and lawful Money of *Great Britain*, to the said *Abraham Barker*, (by and with the Consent and Agreement of the said *John Barker*, and *Katherine Edwards*, testified by their being Parties to, and their Sealing and Delivery of, these Presents,) by the said *David Edwards* in Hand paid at or before the Ensealing and Delivery hereof, being the Marriage Portion of the said *Katherine Edwards*, bequeathed to her by the last Will and Testament of the said *Lewis Edwards*, her late Father, deceased; the Receipt and Payment whereof the said *Abraham Barker* doth hereby acknowledge, and thereof, and of every Part and Parcel thereof, they the said *Abraham Barker*, *John Barker*, and *Katherine Edwards*, do, and each of them doth, release, acquit, and discharge the said *David Edwards*, his Executors, and Administrators, for ever by these Presents: And for providing a competent Jointure and Provision of Maintenance for the said *Katherine Edwards*, in case she shall,

shall, after the said intended Marriage had, survive and overlive the said *John Barker* her intended Husband : And for settling and assuring the capital Messuage, Lands, Tenements, and Hereditaments, hereinafter mentioned, unto such Uses, and upon such Trusts, as are hereinafter expressed and declared : And for and in Consideration of the Sum of five Shillings of lawful Money of *Great Britain* to the said *Abraham Barker* and *Cecilia* his Wife in Hand paid by the said *David Edwards* and *Francis Golding*, and of ten Shillings of like lawful Money to them also in Hand paid by the said *Charles Browne* and *Richard More*, at or before the Ensealing and Delivery hereof, (the several Receipts whereof are hereby respectively acknowledged,) they the said *Abraham Barker* and *Cecilia* his Wife, ~~have~~, and Release. each of them hath, granted, bargained, sold, released, and confirmed, and by these Presents do, and each of them doth, grant, bargain, sell, release, and confirm unto the said *David Edwards* and *Francis Golding*, their Heirs and Assigns, ~~All~~ that the capital Messuage, called *Dale-Hall* in Parcels. the Parish of *Dale* in the said County of *Norfolk*, wherein the said *Abraham Barker* and *Cecilia* his Wife now dwell, and all those their Lands in the said Parish of *Dale* called or known by the name of *Wilson's Farm*, containing by Estimation five hundred and forty Acres, be the same more or less, together with all and singular Houses, Dovehouses, Barns, Buildings, Stables, Yards, Gardens, Orchards, Lands, Tenements, Meadows, Pastures, Feedings, Commons, Woods, Underwoods, Ways, Waters, Water-courses, Fishings, Privileges, Profits, Easements, Commodities, Advantages, Emoluments, Hereditaments, and Appurtenances whatsoever to the said capital Messuage and Farm belonging or appertaining, or with the same used or enjoyed, or accepted, reputed, taken, or known, as Part, Parcel, or Member thereof, or as belonging to the same or any Part thereof: (all which said Premises are now in the actual Possession of the said *David Edwards* and *Francis Golding*, by virtue of a Bargain and Sale to them there-  
Mention of Bar-  
gain and Sale.

of made by the said *Abraham Barker* and *Cecilia* his Wife for one whole Year, in consideration of five Shillings to them paid by the said *David Edwards* and *Francis Golding*, in and by one Indenture bearing Date the Day next before the Day of the Date hereof, and by force of the Statute for transferring Uses into Possession;) and the Reversion and Reversions, Remainder and Remainders, yearly and

## No. IV.

*Habendum.*To the Use of  
the Grantors till  
Marriage:Then of the Hus-  
band for Life,  
*John Barker*:Remainder to  
Trustees, to pre-  
serve contingent  
Remainders:Remainder to the  
Wife for Life, for  
her Jointure, in  
Bar of Dower:

and other Rents, Issues, and Profits thereof, and every Part, and Parcel thereof, and also all the Estate, Right, Title, Interest, Trust, Property, Claim, and Demand whatsoever, both at law and in Equity, of them the said *Abraham Barker* and *Cecilia* his Wife, in, to, or out of, the said capital Messuage, Lands, Tenements, Hereditaments, and Premises; ~~To have and to hold~~ the said capital Messuage, Lands, Tenements, Hereditaments, and all and singular other the Premises herein before mentioned to be hereby granted and released, with their and every of their Appurtenances, unto the said *David Edwards* and *Francis Golding*, their Heirs and Assigns, to such Uses, upon such Trusts, and to and for such Intents and Purposes as are hereinafter mentioned, expressed, and declared, of and concerning the same: That is to say, to the Use and Behoof of the said *Abraham Barker*, and *Cecilia* his Wife, according to their several and respective Estates and Interests therein, at the time of, or immediately before, the Execution of these Presents, until the Solemnization of the said intended Marriage: And from and after the Solemnization thereof, to the Use and Behoof of the said *John Barker*, for and during the Term of his natural Life; without Impeachment of or for any Manner of Waste: And from and after the Determination of that Estate, then to the Use of the said *David Edwards* and *Francis Golding*, and their heirs, during the Life of the said *John Barker*, upon Trust to support and preserve the contingent Uses and Estates hereinafter limited from being defeated and destroyed, and for that Purpose to make Entries, or bring Actions, as the Case shall require; but nevertheless to permit and suffer the said *John Barker*, and his Assigns, during his Life, to receive and take the Rents and Profits thereof, and of every Part thereof, to and for his and their own Use and Benefit: And from and after the Decease of the said *John Barker*, then to the Use and Behoof of the said *Katherine Edwards*, his intended Wife, for and during the Term of her natural Life, for her Jointure, and in Lieu, Bar, and Satisfaction of her Dower and Thirds at common Law, which she can or may have or claim, of, in, to, or out of, all, and every, or any, of the Lands, Tenements, and Hereditaments, whereof or wherein the said *John Barker* now is, or at any Time or Times hereafter during the Coverture between them shall be, seised of any Estate of Freehold or

Inhe-

Inheritance: And from and after the Decease of the said *Katherine Edwards*, or other sooner Determination of the said Estate, then to the Use and Behoof of the said *Charles Browne* and *Richard More*, their Executors, Administrators, and Assigns, for and during, and unto the full End and Term of, five hundred Years from thence next ensuing and fully to be complete and ended, without Impeachment of Waste: upon such Trusts nevertheless, and to and for such Intents and Purposes, and under and subject to such Provisoos and Agreements, as are herein after mentioned, expressed, and declared of and concerning the same: And from and after the End, Expiration, or other sooner Determination of the said Term of five hundred Years, and subject thereunto, to the Use and Behoof of the first Son of the said *John Barker* on the Body of the said *Katherine Edwards* his intended Wife to the begotten, and of the Heirs of the Body of such first Son lawfully issuing; and for Default of such Issue, then to the Use and Behoof of the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and of all and every other the Son and Sons of the said *John Barker* on the body of the said *Katherine Edwards* his intended Wife to be begotten, severally, successively, and in Remainder, one after another, as they and every of them shall be in seniority of Age and Priority of Birth, and of the several and respective Heirs of the Body and Bodies of all and every such Son and Sons lawfully issuing; the elder of such Sons, and the Heirs of his Body issuing, being always to be preferred and to take before the younger of such Sons, and the Heirs of his or their Body or Bodies issuing: And for Default of such Issue, then to the Use and Behoof of all and every the Daughter and Daughters of the said *John Barker* on the Body of the said *Katherine Edwards* his intended Wife to be begotten, to be equally divided between them, (if more than one,) as Tenants in share and share alike, as Tenants in common and not as common, Joint-tenants, and of the several and respective Heirs of the Body and Bodies of all and every such Daughter and Daughters, lawfully issuing: And for Default of such Issue, then to the Use and Behoof of the Heirs of the Body of him the said *John Barker* lawfully issuing: And for Default of such Heirs, then to the Use and Behoof of the said *Cecilia*, the Wife of the said *Abraham Barker*, and of her Heirs and Assigns for ever. And as to, for, and concerning the Term of five hundred Years herein before

No. IV.

Remainder to other Trustees for a Term, upon Trusts after mentioned:

Remainder to the first and other Sons of the Marriage in tail:

Remainder to the Daughters,

as Tenants in Tail:

Remainder to the Husband in Tail:

Remainder to the Husband's Mother in Fee.

The Trust of the Term declared;

limited

## No. IV.

to raise Portions  
for younger Children,

payable at certain  
Times,

with Maintenance at the rate  
of 4 per cent.

and Benefit of  
Survivorship.

limited to the said *Charles Browne* and *Richard More*, their Executors, Administrators, and Assigns, as aforesaid, it is hereby declared and agreed by and between all the said Parties to these Presents, that the same is so limited to them upon the Trusts, and to and for the Intents and Purposes, and under and subject to the Provisoes and Agreements, hereinafter mentioned, expressed, and declared, of and concerning the same: That is to say, in case there shall be an eldest or only Son and one more or other Child or Children of the said *John Barker*, on the Body of the said *Katherine* his intended Wife to be begotten, then upon Trust that they the said *Charles Browne* and *Richard More*, their Executors, Administrators, and Assigns, by Sale or Mortgage of the said Term of five hundred Years, or by such other Ways and Means as they or the Survivor of them, or the Executors or Administrators of such Survivor shall think fit, shall and do raise and levy, or borrow and take up at Interest, the Sum of four thousand Pounds of lawful Money of *Great Britain*, for the Portion or Portions of such other Child and Children (besides the eldest or only Son) as aforesaid, to be equally divided between them (if more than one) Share and Share alike; the Portion or Portions of such of them as shall be a Son or Sons to be paid at his or their respective Age or Ages of twenty one Years; and the Portion or Portions of such of them as shall be a Daughter or Daughters to be paid at her or their respective Age or Ages of twenty one Years, or Day or Days of Marriage, which shall first happen. And upon this further Trust, that in the mean time and until the same Portions shall become payable as aforesaid, the said *Charles Browne* and *Richard More*, their Executors, Administrators, and Assigns, shall and do, by and out of the Rents, Issues, and Profits of the Premises aforesaid, raise and levy such competent yearly Sum and Sums of Money for the Maintenance and Education of such Child or Children, as shall not exceed in the whole the Interest of their respective Portions after the rate of four Pounds in the hundred yearly. Provided always, that in case any of the same Children shall happen to die before his, her, or their Portions shall become payable as aforesaid, then the Portion or Portions of such of them so dying shall go and be paid unto and be equally divided among the Survivor or Survivors of them, when and at such time as the original Portion or Portions of such surviving Child or Children shall

No. IV.

shall become payable as aforesaid. Provided also, that in case there shall be no such Child or Children of the said *John Barker* on the Body of the said *Katherine* his intended Wife begotten, besides an eldest or only Son; or in case all and every such Child or Children shall happen to die before all or any of their said Portions shall become due and payable as aforesaid; or in case the said Portions, and also such Maintenance as aforesaid, shall by the said *Charles Browne* and *Richard More*, their Executors, Administrators, or Assigns, be raised and levied by any of the Ways and Means in that behalf afore-mentioned; or in case the same by such Person or Persons, as shall for the time being be next in Reversion or Remainder of the same Premises expectant upon the said Term of five hundred Years, shall be paid, or well and duly secured to be paid, according to the true Intent and Meaning of these Presents; then and in any of the said cases, and at all times thenceforth, the said Term of five hundred Years, or so much thereof as shall remain unfold or undisposed of for the Purposes aforesaid, shall cease, determine, and be utterly void to all Intents and Purposes, any thing herein contained to the contrary thereof in any wise notwithstanding. **Provided** also, and it is hereby further declared and agreed by and between all the said Parties to these Presents, that in case the said *Abraham Barker* or *Cecilia* his Wife, at any time during their Lives, or the Life of the Survivor of them, with the Approbation of the said *David Edwards* and *Francis Golding*, or the Survivor of them, or the Executors and Administrators of such Survivor, shall settle, convey, and assure other Lands and Tenements of an Estate of Inheritance in Fee simple, in Possession, in some convenient Place or Places within the Realm of *England*, of equal or better Value than the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, hereby granted and released, and in Lieu, and Recompense thereof, unto and for such and the like Uses, Intents, and Purposes, and upon such and the like Trusts, as the said capital Messuage, Lands, Tenements, Hereditaments, and Premises are hereby settled and assured unto and upon, then and in such case, and at all times from thenceforth, all and every the Use and Uses, Trust and Trusts, Estate and Estates herein before limited, expressed, and declared of or concerning the same, shall cease, determine, and be utterly void to all Intents and Purposes; and the same capital Messuage, Lands, Tenements, Hereditaments,

If no such Child,

or if all die,

or if the Portions be raised,

or paid,

or secured by the Person next in Remainder; the Residue of the Term to cease.

Condition, that the Uses and Estates hereby granted shall be void, on settling other Lands of equal value in recompense.



## No. IV.

Covenant, to levy  
a Fine.

taments, and Premises, shall from thenceforth remain and be to and for the only proper Use and Behoof of the said *Abraham Barker* or *Cecilia* his Wife, or the Survivor of them, so settling, conveying, and assuring such other Lands and Tenements as aforesaid, and of his or her Heirs, and Assigns for ever; and to and for no other Use, Intent, or Purpose whatsoever; any thing herein contained to the contrary thereof in any wise notwithstanding. And, for the Considerations aforesaid, and for barring all Estates tail, and all Remainders or Reversions thereupon expectant and depending, if any be now subsisting and unbarred or otherwise undetermined, of and in the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, hereby granted and released, or mentioned to be hereby granted and released, or any of them, or any Part thereof, the said *Abraham Barker* for himself and the said *Cecilia* his Wife, his and her Heirs, Executors, and Administrators, and the said *John Barker* for himself, his Heirs, Executors, and Administrators, do, and each of them doth, respectively covenant, promise, and grant, to and with the said *David Edwards* and *Francis Golding*, their Heirs, Executors, and Administrators, by these Presents, that they the said *Abraham Barker* and *Cecilia* his Wife, and *John Barker*, shall and will, at the Costs and Charges of the said *Abraham Barker*, before the End of *Michaelmas* Term next ensuing the Date hereof, acknowledge and levy, before his Majesty's Justices of the Court of common Pleas at *Westminster*, one or more Fine or Fines, *sur Cognissance de Droit*, *come ceo*, &c. with Proclamations according to the Form of the Statutes in that case made and provided, and the usual Course of Fines in such cases accustomed, unto the said *David Edwards*, and his Heirs, of the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, by such apt and convenient Names, Quantities, Qualities, Number of Acres, and other Descriptions to ascertain the same, as shall be thought meet: Which said Fine or Fines, so as aforesaid or in any other manner levied and acknowledged, or to be levied and acknowledged, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are and were meant and intended, to be and enure, and are hereby declared by all the said Parties to these Presents to be and enure, to the Use and Behoof of the said *David Edwards*, and his Heirs and Assigns; to the Intent and Purpose that the said *David Edwards* may, by virtue of the said

said Fine or Finés so covenanted and agreed to be levied as  
aforesaid, be and become perfect Tenant of the Freehold  
of the said capital Messuage, Lands, Tenements, Heredi-  
taments, and all other the Premises, to the end that one or  
more good and perfect common Recovery or Recoveries  
may be thereof had and suffered, in such Manner as is here-  
inafter for that Purpose mentioned. And it is hereby de-  
clared and agreed by and between all the said Parties to  
these Presents, that it shall and may be lawful to and for  
thé said *Francis Golding*, at the Costs and Charges of the  
said *Abraham Barker*, before the End of *Michaelmas* Term  
next ensuing the Date hereof, to sue forth and prosecute  
out of his Majesty's high Court of Chancery one or more  
Writ or Writs of Entry *sur Disseisin en le Poit*, returnable  
before his Majesty's Justices of the Court of common Pleas  
at *Westminster*, thereby demanding by apt and convenient  
Names, Quantities, Qualities, Number of Acres, and  
other Descriptions, the said capital Messuage, Lands, Te-  
nements, Hereditaments, and Premises, against the said  
*David Edwards*; to which said Writ, or Writs, of Entry  
he the said *David Edwards* shall appear *gratis*, either in his  
own proper Person, or by his Attorney thereto lawfully  
authorized, and vouch over to Warranty the said *Abraham  
Barker*, and *Cecilia* his Wife, and *John Barker*; who  
shall also *gratis* appear in their proper Persons, or by their  
Attorney, or Attorneys, thereto lawfully authorized, and  
enter into the Warranty, and vouch over to Warranty the  
common Vouchee of the same Court; who shall also ap-  
pear, and after Imparlance shall made Default; so as  
Judgment shall and may be thereupon had and given for  
the said *Francis Golding*, to recover the said capital Mes-  
suage, Lands, Tenements, Hereditaments, and Premises,  
against the said *David Edwards*, and for him to recover in  
Value against the said *Abraham Barker*, and *Cecilia* his  
Wife, and *John Barker*, and for them to recover in Value  
against the said common Vouchee, and that Execution shall  
and may be thereupon awarded and had accordingly, and  
all and every other Act and Thing be done and executed,  
needful and requisite for the suffering and Perfecting of  
such common Recovery or Recoveries, with Vouchers as  
aforesaid. And it is hereby further declared and agreed  
by and between all the said Parties to these Presents, that  
immediately from and after the Suffering and Perfecting  
of the said Recovery or Recoveries, so as aforesaid, or

in order to make  
a Tenant to the  
*Præcipe*,  
that a Recovery  
may be suffered;

to cure

N<sup>o</sup>. IV.

in any other manner, or at any other time or times, suffered or to be suffered, as well these Presents and the Assurance hereby made, and the said Fine or Fines so covenanted to be levied as aforesaid, as also the said Recovery or Recoveries, and also all and every other Fine and Fines, Recovery and Recoveries, Conveyances, and Assurances in the Law whatsoever heretofore had, made, levied, suffered, or executed, or hereafter to be had, made, levied, suffered, or executed, of the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, or any of them, or any Part thereof, by and between the said Parties to these Presents or any of them, or whereunto they or any of them are or shall be Parties or Privies, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are and were meant and intended, to be and enure, and the Recoveror or Recoverors in the said Recovery or Recoveries named or to be named, and his or their Heirs, shall stand and be seised of the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, and of every Part and Parcel thereof, to the Uses, upon the Trusts, and to and for the Intents and Purposes, and under and subject to the Provisoos, Limitations, and Agreements, herein before mentioned, expressed, and declared, of and concerning the same. And the said *Abraham Barker*, Party hereunto, doth hereby for himself, his Heirs, Executors, and Administrators, further covenant, promise, grant, and agree, to and with the said *David Edwards* and *Francis Golding*, their Heirs, Executors, and Administrators, in manner and form following; that is to say, that the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, shall and may at all times hereafter remain, continue, and be, to and for the Uses and Purposes, upon the Trusts, and under and subject to the Provisoos, Limitations, and Agreements, herein before-mentioned, expressed, and declared, of and concerning the same; and shall and may be peaceably and quietly had, held, and enjoyed accordingly, without any lawful Let or Interruption of or by the said *Abraham Barker* or *Cecilia* his Wife, Parties hereunto, his or her Heirs or Assigns, or of or by any other Person or Persons lawfully claiming or to claim from, by, or under, or in Trust for him, ~~her~~, them, or any of them, or from, by, or under his or her Ancestors, or any of them; and shall so remain, continue, and be, free and clear, and freely and

to the preceding  
Uses in this Deed.

Other Cove-  
nants;

for quiet Enjoy-  
ment,

free from Incum-  
brances;

and clearly acquitted, exonerated, and discharged, or otherwise by the said *Abraham Barker*, or *Cecilia* his Wife, Parties hereunto, his or her Heirs, Executors, or Administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all former and other Gifts, Grants, Bargains, Sales, Leases, Mortgages, Estates, Titles, Troubles, Charges, and Incumbrances whatsoever, had, made, done, committed, occasioned, or suffered, or to be had, made, done, committed, occasioned, or suffered, by the said *Abraham Barker*, or *Cecilia* his Wife, or by his or her Ancestors, or any of them, or by his, her, their, or any of their Act, Means, Assent, Consent, or Procurement: ~~And moreover~~ <sup>and for further Assurance.</sup> that he the said *Abraham Barker*, and *Cecilia* his Wife, Parties hereunto, and his and her Heirs, and all other Persons having or lawfully claiming, or which shall or may have or lawfully claim, any Estate, Right, Title, Trust, or Interest, at Law or in Equity, of, in, to, or out of, the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, or any of them, or any Part thereof, by or under or in Trust for him, her, them, or any of them, or by or under his or her Ancestors or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable Request, and at the Costs and Charges, of the said *David Edwards* and *Francis Golding*, or either of them, their or either of their Heirs, Executors, or Administrators, make, do, and execute, or cause to be made, done, and executed, all such further and other lawful and reasonable Acts, Deeds, Conveyances, and Assurances in the Law whatsoever, for the further, better, more perfect, and absolute Granting, Conveying, Settling, and Assuring of the same capital Messuage, Lands, Tenements, Hereditaments, and Premises, to and for the Uses and Purposes, upon the Trusts, and under and subject to the Provisoos, Limitations, and Agreements, herein before mentioned, expressed, and declared, of and concerning the same, as by the said *David Edwards* and *Francis Golding* or either of them, their or either of their Heirs, Executors, or Administrators, or their or any of their Counsel learned in the Law shall be reasonably advised, devised, or required: So as such further Assurances contain in them no further or other Warranty or Covenants than against the Person or Persons, his, her, or their Heirs, who shall make or do the same;

N<sup>o</sup>. IV.

Power of Revocation.

and so as the Party or Parties, who shall be requested to make such further Assurances, be not compelled or compellable, for making or doing thereof, to go and travel above five Miles from his, her, or their then respective Dwellings, or Places of Abode. ~~Protested lastly,~~ and it is hereby further declared and agreed by and between all the Parties to these Presents, that it shall and may be lawful to and for the said *Abraham Barker* and *Cecilia* his Wife, *John Barker* and *Katherine* his intended Wife, and *David Edwards*, at any time or times hereafter, during their joint Lives, by any Writing or Writings under their respective Hands and Seals and attested by two or more credible Witnesses, to revoke, make void, alter, or change all and every or any the Use and Uses, Estate and Estates, herein and hereby before limited and declared, or mentioned or intended to be limited and declared, of and in the capital Messuage, Lands, Tenements, Hereditaments, and Premises aforesaid, or of and in any Part or Parcel thereof, and to declare new and other Uses of the same, or of any Part or Parcel thereof, any thing herein contained to the contrary thereof in any wise notwithstanding. ~~In witness whereof~~ the Parties to these Presents their Hands and Seals have subscribed and set, the Day and Year first above written.

Conclusion.

Sealed, and delivered, being first duly stamped, in the presence of  
*George Carter.*  
*William Browne.*

*Abraham Barker.* (L. S.)  
*Cecilia Barker.* (L. S.)  
*David Edwards.* (L. S.)  
*Francis Golding.* (L. S.)  
*Charles Browne.* (L. S.)  
*Richard More.* (L. S.)  
*John Barker.* (L. S.)  
*Katherine Edwards.* (L. S.)

N<sup>o</sup>. V.

*An OBLIGATION, or BOND, with CONDITION  
for the Payment of Money.*

**K** Now all Men by these Presents that I *David Edwards*, of *Lincoln's Inn* in the County of *Middlesex*, Esquire, am held and firmly bound to *Abraham Barker* of *Dale-Hall* in the County of *Norfolk*, Esquire, in ten thousand Pounds of lawful Money of *Great Britain*, to be paid by the said *Abraham Barker*, or his certain Attorney, Executors, Administrators, or Assigns; for which Payment well and truly to be made, I bind myself, my Heirs, Executors, and Administrators, firmly by these Presents, sealed with my Seal. Dated the fourth Day of *September* in the twenty first Year of the Reign of our sovereign Lord *GEORGE* the second by the Grace of God King of *Great Britain, France, and Ireland*, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and forty seven.

The Condition of this Obligation is such, that if the above bounden *David Edwards*, his Heirs, Executors, or Administrators, do and shall well and truly pay, or cause to be paid, unto the above named *Abraham Barker*, his Executors, Administrators, or Assigns, the full Sum of five thousand Pounds of lawful *British* Money, with lawful Interest for the same, on the fourth Day of *March* next ensuing the Date of the above written Obligation; then this Obligation shall be void and of none Effect, or else shall be and remain in full Force and Virtue.

Sealed, and delivered, being *David Edwards*. (L. S.)  
first duly stamped, in the  
presence of

*George Carter.*

*William Browne.*

N<sup>o</sup>. VI.N<sup>o</sup>. VI.

*A FINE of Lands, sur Cognizance de Droit,  
come ceo, &c.*

§. 1. *Writ of Covenant; or, PRAECIPE.*

**G E O R G E** the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to the Sheriff of *Norfolk*, Greeting. **Command** *Abraham Barker*, Esquire, and *Cecilia* his Wife, and *John Barker*, Esquire, that justly and without delay they perform to *David Edwards*, Esquire, the Covenant made between them of two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*; and unless they shall so do, and if the said *David* shall give you Security of prosecuting his Claim, then summon by good Summoners the said *Abraham*, *Cecilia*, and *John*, that they appear before our Justices, at *Westminster*; from the Day of Saint *Michael* in one Month, to shew wherefore they have not done it: And have you there the Summoners, and this Writ. **Witness** Ourself at *Westminster*, the ninth Day of *October*, in the twenty first Year of our Reign.

|                   |                         |   |                     |                                  |   |                                   |
|-------------------|-------------------------|---|---------------------|----------------------------------|---|-----------------------------------|
| Sheriff's Return. | Pledges of Prosecution, | { | <i>John Doe.</i>    | Summoners of the within named A- | { | <i>John Den.</i>                  |
|                   |                         |   | <i>Richard Roe.</i> |                                  |   | <i>brabam, Cecilia, and John.</i> |

§. 2. *The Licence to agree.*

*Norfolk,* } **David Edwards**, Esquire, gives to the  
to wit } Lord the King ten Marks, for Licence to  
agree with *Abraham Barker*, Esquire, of a Plea of Covenant of two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres

Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*.

N<sup>o</sup>. VI.

§. 3. *The Concord.*

**And the Agreement is such,** to wit, that the aforesaid *Abraham, Cecilia,* and *John,* have acknowledged the aforesaid Tenements, with the Appurtenances, to be the Right of him the said *David,* as those which the said *David* hath of the Gift of the aforesaid *Abraham, Cecilia,* and *John;* and those they have remised and quitted Claim, from them and their Heirs, to the aforesaid *David* and his Heirs for ever. And further, the same *Abraham, Cecilia,* and *John,* have granted, for themselves and their Heirs, that they will warrant to the aforesaid *David,* and his Heirs, the aforesaid Tenements, with the Appurtenances, against all Men for ever. And for this Recognition, Remise, Quit-Claim, Warranty, Fine, and Agreement, the said *David* hath given to the said *Abraham, Cecilia,* and *John,* two hundred Pounds sterling.

§. 4. *The Note, or Abstract.*

*Norfolk,* } **Between** *David Edwards,* Esquire, Com-  
to wit, } plainant, and *Abraham Barker,* Esquire, and  
*Cecilia* his Wife, and *John Barker,* Esquire, Deforciant,  
of two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale,* whereupon a Plea of Covenant was summoned between them; to wit, that the said *Abraham, Cecilia,* and *John,* have acknowledged the aforesaid Tenements, with the Appurtenances, to be the Right of him the said *David,* as those which the said *David* hath of the Gift of the aforesaid *Abraham, Cecilia,* and *John;* and those they have remised and quitted Claim, from them and their Heirs, to the aforesaid *David* and his Heirs for ever. And further, the same *Abraham, Cecilia,* and *John,* have granted for themselves, and their Heirs, that they will warrant to the aforesaid *David,* and his Heirs, the aforesaid Tenements, with the Appurtenances, against all Men for ever. And for this Recognition, Remise, Quit-Claim, Warranty, Fine, and Agreement,  
the



Nº. VI. the said *David* hath given to the said *Abraham*, *Cecilia*, and *John*, two hundred Pounds sterling.

§. 5. *The Foot, Chirograph, or Indentures, of the FINE.*

*Norfolk*, } **This is the final Agreement**, made in  
to wit. § the Court of the Lord the King at *Westminster*, from the Day of Saint *Michael* in one Month, in the twenty first Year of the Reign of the Lord *GEORGE* the second by the Grace of God of *Great Britain*, *France*, and *Ireland* King, Defender of the Faith, and so forth, before *John Willes*, *Thomas Abney*, *Thomas Burnet*, and *Thomas Birch*, Justices, and other faithful Subjects of the Lord the King then there present, between *David Edwards*, Esquire, Complainant, and *Abraham Barker*, Esquire, and *Cecilia* his Wife, and *John Barker*, Esquire, Deforciant, of two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*, whereupon a Plea of Covenant was summoned between them in the said Court; to wit, that the aforesaid *Abraham*, *Cecilia*, and *John*, have acknowledged the aforesaid Tenements, with the Appurtenances, to be the Right of him the said *David*, as those which the said *David* hath of the Gift of the aforesaid *Abraham*, *Cecilia*, and *John*; and those they have remised and quitted Claim, from them and their Heirs, to the aforesaid *David* and his Heirs for ever. And further, the same *Abraham*, *Cecilia*, and *John*, have granted, for themselves and their Heirs, that they will warrant to the aforesaid *David* and his Heirs, the aforesaid Tenements, with the Appurtenances, against all Men for ever. And for this Recognition, Remise, Quit-Claim, Warranty, Fine, and Agreement, the said *David* hath given to the said *Abraham*, *Cecilia*, and *John*, two hundred Pounds sterling.

§. 6. *Proclamations, endorsed upon the FINE, according to the Statutes.*

**The first** Proclamation was made the sixteenth Day of *November*, in the Term of Saint *Michael*, in the twenty first Year of the King withinwritten.

**The**

**The second** Proclamation was made the fourth Day of *February*, in the Term of *Saint Hilary*, in the twenty first Year of the King withinwritten.

**The third** Proclamation was made the thirteenth Day of *May*, in the Term of *Easter*, in the twenty first Year of the King withinwritten.

**The fourth** Proclamation was made the twenty eighth Day of *June*, in the Term of the holy *Trinity*, in the twenty second Year of the King withinwritten.

N<sup>o</sup>. VII.

*A common RECOVERY of Lands, with \* double  
Voucher.*

N<sup>o</sup>. VII.

§. 1. *Writ of Entry sur Disseisin in the Post; or,  
FRANCISE.*

**G E O R G E** the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to the Sheriff of *Norfolk*, Greeting, **Command** *David Edwards*, Esquire, that justly and without delay he render to *Francis Golding*, Clerk, two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*, which he claims to be his Right and Inheritance, and into which the said *David* hath not Entry, unless after the Disseisin, which *Hugh Hunt* thereof unjustly, and without judgment, hath made to the aforesaid *Francis*, within thirty Years now last past, as he saith, and whereupon he complains that the aforesaid *David* deforceth him. And unless he shall so do, and if the said *Francis* shall give you Security of prosecuting his Claim, then summon by good Summoners the said *David*, that he appear before our Justices at *Westminster*, on the Octave of *Saint Martin*, to shew wherefore he

\* Note, that if the Recovery be had with single Voucher, the Parts marked "thus" in §. 2. are omitted.

hath

N<sup>o</sup>. VII.

hath not done it: And have you there the Summoners, and this Writ. ~~Witness~~ Ourself at *Westminster*, the twenty ninth Day of *October*, in the twenty first Year of our Reign.

|                   |                         |  |   |                     |           |   |                  |  |                     |                |  |                     |  |  |                      |  |  |
|-------------------|-------------------------|--|---|---------------------|-----------|---|------------------|--|---------------------|----------------|--|---------------------|--|--|----------------------|--|--|
| Sheriff's Return. | Pledges of Prosecution, | <table border="0"> <tr> <td style="font-size: 2em; vertical-align: middle;">{</td> <td style="vertical-align: middle;"><i>John Doe.</i></td> <td style="vertical-align: middle;">Summoners</td> <td style="font-size: 2em; vertical-align: middle;">{</td> <td style="vertical-align: middle;"><i>John Den.</i></td> </tr> <tr> <td></td> <td style="vertical-align: middle;"><i>Richard Roe.</i></td> <td style="vertical-align: middle;">of the within-</td> <td></td> <td style="vertical-align: middle;"><i>Richard Fen.</i></td> </tr> <tr> <td></td> <td></td> <td style="vertical-align: middle;">named <i>David</i>,</td> <td></td> <td></td> </tr> </table> | { | <i>John Doe.</i>    | Summoners | { | <i>John Den.</i> |  | <i>Richard Roe.</i> | of the within- |  | <i>Richard Fen.</i> |  |  | named <i>David</i> , |  |  |
| {                 | <i>John Doe.</i>        | Summoners  | { | <i>John Den.</i>    |           |   |                  |  |                     |                |  |                     |  |  |                      |  |  |
|                   | <i>Richard Roe.</i>     | of the within-   |   | <i>Richard Fen.</i> |           |   |                  |  |                     |                |  |                     |  |  |                      |  |  |
|                   |                         | named <i>David</i> ,   |   |                     |           |   |                  |  |                     |                |  |                     |  |  |                      |  |  |

## §. 2. Exemplification of the RECOVERY Roll.

|                        |                            |   |
|------------------------|----------------------------|---|
| Return.                | Demand against the Tenant. | <p><b>THE</b> the second by the Grace of God of <i>Great Britain, France, and Ireland</i> King, Defender of the Faith, and so forth; to all to whom these our present Letters shall come, Greeting. <del>Know ye</del>, that among the Pleas of Land, enrolled at <i>Westminster</i>, before Sir <i>John Willus</i>, Knight, and his Fellows, our Justices of the Bench, of the Term of Saint <i>Michael</i>, in the twenty first Year of our Reign, upon the fifty second Roll it is thus contained. Entry returnable on the Octave of Saint <i>Martin</i>. <del>Portfolk</del>, to wit: <i>Francis Golding</i> Clerk, in his proper Person demandeth against <i>David Edwards</i>, Esquire, two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in <i>Dale</i>, as his Right and Inheritance, and into which the said <i>David</i> hath not Entry, unless after the Disseisin, which <i>Hugh Hunt</i> thereof unjustly, and without Judgment, hath made to the aforesaid <i>Francis</i>, within thirty Years now last past. And whereupon he saith, that he himself was seised of the Tenements aforesaid, with the Appurtenances, in his Demesne as of Fee and Right, in time of Peace, in the Time of the Lord the King that now is, by taking the Profits thereof to the Value [* of six Shillings and eight Pence, and more, in Rents, Corn, and Grass.] And into which [the said <i>David</i> hath not Entry, unless as aforesaid:] And thereupon he bringeth Suit, [and good Proof.] And the said <i>David</i> in his proper Person comes and defendeth his Right, when [and where it shall behove him,] and thereupon voucheth to Warranty “<i>John Barker</i>, Esquire; who is</p> |
| Coma.                  |                            |   |
| Esquire.               |                            |   |
| Defence of the Tenant. |                            |   |
| Voucher.               |                            |   |

\* The Clauses, between Hooks, are no otherwise expressed in the Record than by an &c.

“ present here in Court in his proper Person, and the  
 “ Tenements aforesaid with the Appurtenances to him  
 “ freely warranteth, [and prays that the said *Francis* may  
 “ count against him.] And hereupon the said *Francis* de-  
 “ mandeth against the said *John*, Tenant by his own  
 “ Warranty, the Tenements aforesaid with the Appurte-  
 “ nances, in Form aforesaid, &c. And whereupon he  
 “ saith, that he himself was seised of the Tenements afo-  
 “ said, with the Appurtenances, in his Demesne as of  
 “ Fee and Right, in Time of Peace, in the Time of the  
 “ Lord the King that now is, by taking the Profits thereof  
 “ to the Value, &c. And into which, &c. And thereupon  
 “ he bringeth Suit, &c. And the aforesaid *John*, Tenant  
 “ by his own Warranty, defends his Right, when, &c. and  
 “ thereupon he further voucheth to Warranty” *Jacob Mor-*  
*land*; who is present here in Court in his proper Person,  
 and the Tenements aforesaid, with the Appurtenances, to  
 him freely warranteth, &c. And hereupon the said *Francis*  
 demandeth against the said *Jacob*, Tenant by his own  
 Warranty, the Tenements aforesaid, with the Appurte-  
 nances, in Form aforesaid, &c. And whereupon he  
 saith, that he himself was seised of the Tenements afo-  
 said, with the Appurtenances, in his Demesne as of Fee  
 and Right, in Time of Peace, in the time of the Lord  
 the King that now is, by taking the Profits thereof to the  
 Value, &c. And into which, &c. And thereupon he  
 bringeth Suit, &c. And the aforesaid *Jacob*, Tenant by  
 his own Warranty, defends his Right, when, &c. And  
 saith that the aforesaid *Hugh* did not disseise the aforesaid  
*Francis* of the Tenements aforesaid, as the aforesaid *Francis*  
*by his Writ and Count aforesaid above doth suppose :*  
 And of this he puts himself upon the Country. And the  
 aforesaid *Francis* thereupon craveth Leave to imparl; and  
 he hath it. And afterwards the aforesaid *Francis* cometh  
 again here into Court in this same Term in his proper  
 Person, and the aforesaid *Jacob*, though solemnly called,  
 cometh not again, but hath departed in Contempt of the  
 Court, and maketh Default. Therefore it is consider-  
 ed, that the aforesaid *Francis* do recover his Seisin against  
 the aforesaid *David* of the Tenements aforesaid, with the  
 Appurtenances: And that the said *David* have of the  
 Land of the aforesaid “ *John*, to the Value [of the Te-  
 “ nements aforesaid;] And further, that the said *John*,  
 “ have of the Land of the said” *Jacob* to the Value [of the  
 “ Tene-

N<sup>o</sup>. VII.

Warranty.

“ Demand against  
 “ the Vouches.

Count.

Defence of the  
 “ Vouches.

“ Second Vouch-  
 “ er.

Warranty.

Demand against  
 the common  
 Vouches.

Count.

Defence of the  
 common Vou-  
 chee.

Plea, Not Disse-  
 sin.

Imparance.

Default of the  
 common Vou-  
 chee.

Judgment for the  
 Demandant.

Recovery in  
 Value.

N<sup>o</sup>. VII.

Amercement;

Award of the  
Writ of Seisin,  
and Return.Exemplification  
continued.

Test.

Tenements aforesaid.] And the said *Jacob* in Mercy. ~~And~~ hereupon the said *Francis* prays a Writ of the Lord the King, to be directed to the Sheriff of the County aforesaid, to cause him to have full Seisin of the Tenements aforesaid with the Appurtenances: And it is granted unto him, returnable here without delay. Afterwards, that is to say, the twenty eighth Day of *November* in this same Term, here cometh the said *Francis* in his proper Person, and the Sheriff, namely *Sir Charles Thompson*, Knight, now sendeth, that he by virtue of the Writ aforesaid to him directed, on the twenty fourth Day of the same Month, did cause the said *Francis* to have full Seisin of the Tenements aforesaid with the Appurtenances, as he was commanded. ~~All and singular~~ which Premises, at the Request of the said *Francis*, by the Tenor of these Presents we have held good to be exemplified. In Testimony whereof we have caused our Seal, appointed for sealing Writs in the Bench aforesaid, to be affixed to these Presents. Witness *Sir John Willes*, Knight, at *Westminster*, the twenty eighth Day of *November*, in the twenty first Year of our Reign.

Cooks.

N<sup>o</sup>. VIII.

*Proceedings on a Writ of RIGHT Patent.*

§. 1. *Writ of RIGHT patent in the COURT BAKON.*

**G E O R G E** the second by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, and so forth, to *Willoughby* Earl of *Abingdon*, greeting. **W E** command you that without Delay you hold full Right to *William Kent* Esquire, of one Messuage and twenty Acres of Land with the Appurtenances in *Dorchester*, which he claims to hold of you by the free Service of one Penny yearly in lieu of all Services, of which *Richard Allen* deforces him. And unless you so do, let the Sheriff of *Oxfordshire* do it, that we no longer hear Complaint thereof for Defect of Right. **Witnests** Ourself at *Westminster*, the twentieth Day of *August*, in the thirtieth Year of our Reign. N<sup>o</sup>. VIII.

Pledges of Prosecution, { John Doe.  
Richard Roe.

§. 2. *Writ of TOLT, to remove it into the COUNTY COURT.*

**Charles Morton**, Esquire, Sheriff of *Oxfordshire*, to *John Long* Bailiff Errant of our Lord the King and of myself, greeting. **B E C A U S E** by the Complaint of *William Kent* Esquire, personally present at my County-Court, to wit, on *Monday* the sixth Day of *September* in the thirtieth Year of the Reign of our Lord **G E O R G E** the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth, at *Oxford* in the Shire-house there holden, I am informed, that although he himself the Writ of our said Lord the King of right Patent directed, to *Willoughby* Earl of *Abingdon*, for this that he should

N<sup>o</sup>. VIII.

should hold full Right to the said *William Kent* of one Messuage and twenty Acres of Land with the Appurtenances in *Dorchester* within my said County, of which *Richard Allen* deforces him, hath brought to the said *Willoughby* Earl of *Abingdon*; yet, for that the said *Willoughby* Earl of *Abingdon* favoureth the said *Richard Allen* in this Part, and hath hitherto delayed to do full Right according to the Exigence of the said Writ, I command you on the Part of our said Lord the King, firmly enjoining, that in your proper Person you go to the Court Baron of the said *Willoughby* Earl of *Abingdon* at *Dorchester* aforesaid, and take away the Plaint, which there is between the said *William Kent* and *Richard Allen* by the said Writ, into my County Court to be next holden; and summon by good Summoners the said *Richard Allen*, that he be at my County Court on *Monday* the fourth Day of *October* next coming at *Oxford* in the Shirehouse there to be holden, to answer to the said *William Kent* thereof. And have you there then the said Plaint, the Summoners, and this Precept. Given in my County Court at *Oxford*, in the Shirehouse, the sixth Day of *September*, in the Year aforesaid.

§. 3. Writ of PONE, to remove it into the Court of  
COMMON PLEAS.

**G E O R G E** the second, by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth, to the Sheriff of *Oxfordshire*, greeting. **But**, at the Request of *William Kent*, before our Justices at *Westminster* on the Morrow of *All Souls*, the Plaint which is in your County Court by our Writ of Right, between the said *William Kent* Demandant, and *Richard Allen* Tenant, of one Messuage and twenty Acres of Land with the Appurtenances in *Dorchester*; and summon by good Summoners the said *Richard Allen*, that he be then there, to answer to the said *William Kent* thereof. And have you there the Summoners and this Writ. **Witness** Ourself at *Westminster*, the tenth Day of *September*, in the thirtieth Year of our Reign.

§. 4. Writ.

§. 4. *Writ of RIGHT, quia Dominus remisit Curiam.*

**G E O R G E** the second, by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth, to the Sheriff of *Oxfordshire*, greeting. **Command** *Richard Allen*, that he justly and without Delay render unto *William Kent* one Messuage and twenty Acres of Land with the Appurtenances in *Dorchester*, which he claims to be his Right and Inheritance, and whereupon he complains that the aforesaid *Richard* unjustly deforces him. And unless he shall so do, and if the said *William* shall give you Security of prosecuting his Claim, then summon by good Summoners the said *Richard*, that he appear before our Justices at *Westminster* on the Morrow of *All Souls*, to shew wherefore he hath not done it. And have you there the Summoners and this writ. **Witness** Ourself at *Westminster*, the twentieth Day of *August*, in the thirtieth Year of our Reign. Because *Wiloughby* Earl of *Abingdon*, the chief Lord of that Fee, hath thereupon remised unto us his Court.

|                                 |   |  |   |                   |
|---------------------------------|---|--|---|-------------------|
| Pledges<br>of Pro-<br>secution. | { <i>John Doe.</i><br><i>Richard Roe.</i> | Summoners of<br>the within na-<br>med <i>Richard</i> . | { <i>John Den.</i><br><i>Richard Fen.</i> | Sheriff's Return. |
|---------------------------------|---|--|---|-------------------|

§. 5. *The Record, with Award of Battel.*

**Pleas** at *Westminster* before sir *John Willes* Knight, and his Brethren, Justices of the Bench of the Lord the King at *Westminster*, of the Term of Saint *Michael* in the thirtieth Year of the Reign of the Lord **G E O R G E** the second, by the Grace of God of *Great Britain, France and Ireland*, King, Defender of the Faith, &c.

Oxon, } *William Kent*, Esquire, by *James Parker* his Writ.  
to wit. } Attorney, demands against *Richard Allen*, Gentleman, one Messuage and twenty Acres of Land, with the Appurtenances, in *Dorchester*, as his Right and Inheritance



N<sup>o</sup>. VIII.

*Dominus remittit  
Curiam.*  
Court.

Esplees.

Defence.

Wager of Battel.

Replications.

Joinder of  
Battel.

tance, by Writ of the Lord the King of Right, *because Willoughby Earl of Abingdon* the chief Lord of that Fee hath now thereupon remitted to the Lord the King his Court. **And** whereupon he saith, that he himself was seised of the Tenements aforesaid, with the Appurtenances, in his Demesne as of Fee and Right, in the Time of Peace, in the Time of the Lord GEORGE the first late King of *Great Britain*, by taking the Esplees thereof to the Value\* [of ten Shillings, and more, in Rents, Corn, and Grasa.] And that such is his Right he offers [suit and good Proof.] **And** the said *Richard Allen*, by *Peter Jones* his Attorney, comes and defends the Right of the said *William Kent*, and his Seisin, when [and where it shall behove him,] and all [that concerns it,] and whatsoever [he ought to defend,] and chiefly the Tenements aforesaid with the Appurtenances, as of Fee and Right, [namely, one Messuage and twenty Acres of Land, with the Appurtenances in *Dorchester*.] **And** this he is ready to defend by the Body of his free Man, *George Rumbold* by Name, who is present here in Court ready to defend the same by his Body, or in what Manner soever the Court of the Lord the King shall consider that he ought to defend. And if any Mischance should befall the said *George* (which God defend) he is ready to defend the same by another Man, who [is bounden and able to defend it.] **And** the said *William Kent* saith, that the said *Richard Allen* unjustly defends the Right of him the said *William*, and his Seisin, &c, and all, &c, and whatsoever, &c, and chiefly of the Tenements aforesaid with the Appurtenances, as of Fee and Right, &c; because he saith, that he himself was seised of the Tenements aforesaid, with the Appurtenances, in his Demesne as of Fee and Right, in the Time of Peace, in the Time of the said Lord GEORGE the first late King of *Great Britain*, by taking the Esplees thereof to the Value, &c. **And** that such is his Right, he is prepared to prove by the Body of his Freeman, *Henry Broughton* by Name, who is present here in Court ready to prove the same by his Body, or in what Manner soever the Court of the Lord the King shall consider that he ought to prove; and if any Mischance

\* N. B. The Clauses between Hooks, in this and the subsequent Numbers of the Appendix, are usually so otherwise expressed in the Records than by an &c.

should

should befall the said *Henry* (which God defend) he is ready to prove the same by another Man, who, &c. **And** hereupon it is demanded of the said *George* and *Henry*, whether they are ready to make Battel, as they before have waged it: who say that they are. **And** the same *George* Gages given. *Rumbold* giveth Gage of defending, and the said *Henry Broughton* giveth Gage of proving; and such Engagement being given as the Manner is, it is demanded of the said *William Kent* and *Richard Allen*, if they can say any thing wherefore Battel ought not to be awarded in this Case; who say that they cannot. **Therefore it is considered**, that Award of Battel. Battel be made thereon, &c. **And** the said *George Rumbold* findeth Pledges of Battel, to wit, *Paul Jenkins* and *Charles Carter*; and the said *Henry Broughton* findeth also Pledges of Battel, to wit, *Reginald Read* and *Simon Taylor*. **And thereupon** Day is here given as well to the said *William Kent* as to the said *Richard Allen*, to wit, on the Morrow of Saint *Martin* next coming, by the Assent as well of the said *William Kent* as of the said *Richard Allen*. And it is commanded that each of them then have here his Champion, sufficiently furnished with competent Armour as becomes him, and ready to make the Battel aforesaid: and that the Bodies of them in the mean Time be safely kept, on Peril that shall fall thereon. **At** which Day here Champions appear. come as well the said *William Kent* as the said *Richard Allen* by their Attorneys aforesaid, and the said *George Rumbold* and *Henry Broughton* in their proper Persons likewise come, sufficiently furnished with competent Armour as becomes them, ready to make the Battel aforesaid, as they had before waged it. **And** hereupon Day is further Adjournment given by the Court here, as well to the said *William Kent* to *Totbill Field*, as to the said *Richard Allen*, at *Totbill* near the City of *Westminster* in the County of *Middlesex*, to wit, on the Morrow of the Purification of the Blessed Virgin *Mary* next coming, by the Assent as well of the said *William* as of the aforesaid *Richard*. And it is commanded, that each of them have then there his Champion, armed in the Form aforesaid, ready to make the Battel aforesaid, and that their Bodies in the mean Time, &c. At which Day here, to wit, at *Totbill* aforesaid, comes the said *Richard Allen* by his Attorney aforesaid, and the said *George Rumbold* and *Henry Broughton* in their proper Persons likewise come, sufficiently furnished with competent Armour as becomes them,

N<sup>o</sup>. VIII. them, ready to make the Battel aforesaid, as they before had waged it. And the said *William Kent* being solemnly called doth not come, nor hath prosecuted his Writ aforesaid.

Plaintiff nonsuit. *Therefore it is considered*, that the same *William* and his Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, be in Mercy for his false Complaint, and that the same *Richard* go thereof without a Day, &c., and also that the said *Richard* do hold the Tenements aforesaid with the Appurtenances, to him and his Heirs, quit of the said *William* and his Heirs for ever, &c.

Final Judgment, for the Defendant.

#### §. 6. Trial by the grand Assise.

Defence,


Misc.

Tender of the  
demi-mark,

Summons of the  
Knights,

And the said *Richard Allen*, by *Peter Jones* his Attorney, comes and defends the Right of the said *William Kent*, and his Seisin, when, &c., and all, &c., and whatsoever, &c., and chiefly of the Tenements aforesaid with the Appurtenances, as of Fee and Right, &c., and puts himself upon the grand Assise of the Lord the King, and prays Recognition to be made, whether he himself hath greater Right to hold the Tenements aforesaid with the Appurtenances to him and his Heirs as Tenants thereof as he now holdeth them, or the said *William* to have the said Tenements with the Appurtenances as he above demandeth them. And he tenders here in Court six Shillings and eight-Pence to the Use of the Lord the now King, &c., for that, to wit, it may be inquired of the Time [of the Seisin alleged by the said *William*.] And he therefore prays, that it may be inquired by the Assise, whether the said *William Kent* was seised of the Tenements aforesaid with the Appurtenances in his Demesne as of Fee in the Time of the said Lord the King *GEORGE* the first, as the said *William* in his Demand before hath alleged. ~~There-~~fore it is commanded the Sheriff, that he summon by good Summoners four lawful Knights of his County, girt with Swords, that they be here on the Octaves of Saint *Hilary* next coming, to make Election of the Assise aforesaid. The same

same Day is given as well to the said *William Kent* as to the said *Richard Allen*, here, &c. At which Day here come as well the said *William Kent* as the said *Richard Allen*; and the Sheriff, to wit, Sir *Adam Alstone* Knight now returns, that he had caused to be summoned *Charles Stephens*, *Randal Wheeler*, *Toby Cox*, and *Thomas Munday*, four lawful Knights of his County, girt with Swords, by *John Doe* and *Richard Roe* his Bailiffs, to be here at the said Octaves of Saint *Hilary*, to do as the said Writ thereof commands and requires; and that the said Summoners, and each of them, are mainprized by *John Day* and *James Fletcher*. Whereupon the said *Charles Stephens*, *Randal Wheeler*, *Toby Cox*, and *Thomas Munday*, four lawful Knights of the County aforesaid, girt with Swords, being called, in their Election of the proper Persons come, and, being sworn, upon their Oath Jury, in the Presence of the Parties aforesaid chose of themselves and others twenty four, to wit, *Charles Stephens*, *Randal Wheeler*, *Toby Cox*, *Thomas Munday*, *Oliver Greenway*, *John Boys*, *Charles Price*, Knights, *Daniel Prince*, *William Day*, *Roger Lucas*, *Patrick Fleming*, *James Harris*, *John Richardson*, *Alexander Moore*, *Peter Payne*, *Robert Quin*, *Archibald Stuart*, *Bartholomew Norton*, and *Henry Davis*, Esquires, *John Porter*, *Christopher Ball*, *Benjamin Robinson*, *Lewis Long*, *William Kirby*, Gentlemen, good and lawful Men of the County aforesaid, who neither are of Kin to the said *William Kent* nor to the said *Richard Allen*, to make Recognition of the grand Assise aforesaid. **Therefore** it is commanded the Sheriff, that he cause them to come here from the Day of *Easter* in fifteen Days, to make the Recognition aforesaid. The same Day is there given to the Parties aforesaid. At which Day here come as well the said *William Kent* as the said *Richard Allen*, by their Attorneys aforesaid, and the Recognitors of the Assise whereof Mention is above made being called come, and certain of them, to wit, *Charles Stephens*, *Randal Wheeler*, *Toby Cox*, *Thomas Munday*, *Charles Price*, Knights, *Daniel Prince*, *Roger Lucas*, *William Day*, *James Harris*, *Peter Payne*, *Robert Quin*, *Henry Davis*, *John Porter*, *Christopher Ball*, *Lewis Long*, and *William Kirby*, being elected, tried, and sworn, upon their Oath say, that the said *William Kent* hath more Right to have the Tenements aforesaid with the Appurtenances to him and his Heirs, as he demandeth the same, than the said *Richard Allen* to hold the same as he now holdeth them,

N<sup>o</sup>. VIII.  them, according as the said *William Kent* by his Writ  
aforesaid hath supposed. **Therefore it is considered**, that  
Judgment. the said *William Kent* do recover his Seisin against the said  
*Richard Allen* of the Tenements aforesaid with the Appur-  
tenances, to him and his Heirs, quit of the said *Richard*  
*Allen* and his Heirs, for ever ; and the said *Richard Allen*  
in Mercy, &c.

No. IX.

No. IX.

*Proceedings on an Action of Trespass in EJECT-  
MENT, by Original, in the King's Bench.*

§. 1. *The Original Writ.*

**G E O R G E** the second by the Grace of God of *Si facit te secu-*  
*Great Britain, France, and Ireland King, Defen-*  
der of the Faith, and so forth; to the Sheriff of *Berk-*  
*shire*, Greeting. **I**f *Richard Smith* shall give you Secu-  
rity of prosecuting his Claim, then put by Gage and safe  
Pledges *William Stiles*, late of *Newbury*, Gentleman, so  
that he be before Us on the Morrow of *All-Souls*, where-  
soever We shall then be in *England*, to shew wherefore  
with Force and Arms he entered into one Messuage, with  
the Appurtenances, in *Sutton*, which *John Rogers*, Esquire,  
hath demised to the aforesaid *Richard*, for a Term which  
is not yet expired, and ejected him from his said Farm,  
and other Enormities to him did, to the great Damage of  
the said *Richard*, and against our Peace. And have you  
there the Names of the Pledges, and this Writ. *Witness*  
Ourself at *Westminster*, the twelfth Day of *October*, in the  
twenty ninth Year of our Reign.

Pledges of Prosecution, { *John Doe.*  
  { *Richard Roe.*  
The within named *William Stiles* { *John Den.*  
is attached by Pledges,                { *Richard Fen.*

Sheriff's Return,

§. 2. *Copy of the Declaration against the casual Ejector;  
who gives Notice thereupon to the Tenant in Possession.*

*Michaelmas*, the 29th of King *George* the second.

*Berks*, { *William Stiles*, late of *Newbury* in the said Declaration,  
to wit. { County, Gentleman, was attached to answer to  
*Richard Smith*, of a Plea, wherefore with Force and Arms  
he entered into one Messuage, with the Appurtenances, in  
*Sutton* in the County aforesaid, which *John Rogers* Esquire  
demised

N<sup>o</sup>. IX.

demised to the said *Richard Smith* for a Term which is not yet expired, and ejected him from his said Farm, and other Wrongs to him did, to the great Damage of the said *Richard*, and against the Peace of the Lord the King, &c. And whereupon the said *Richard* by *Robert Martin* his Attorney complains, that whereas the said *John Rogers* on the first Day of *October* in the twenty ninth Year of the Reign of the Lord the King that now is, at *Sutton* aforesaid, had demised to the same *Richard* the Tenement aforesaid, with the Appurtenances, to have and to hold the said Tenement, with the Appurtenances, to the said *Richard* and his Assigns, from the Feast of Saint *Michael* the Archangel then last past, to the End and Term of five Years from thence next following and fully to be complete and ended, by virtue of which Demise the said *Richard* entered into the said Tenement, with the Appurtenances, and was thereof possessed; and, the said *Richard* being so possessed thereof, the said *William* afterwards, that is to say, on the said first Day of *October* in the said twenty ninth Year, with Force and Arms, that is to say, with Swords, Staves, and Knives, entered into the said Tenement, with the Appurtenances, which the said *John Rogers* demised to the said *Richard* in Form aforesaid for the Term aforesaid which is not yet expired, and ejected the said *Richard* out of his said Farm, and other Wrongs to him did, to the great Damage of the said *Richard*, and against the Peace of the said Lord the King; whereby the said *Richard* saith that he is injured and damaged to the Value of twenty Pounds; And thereupon he brings Suit, &c.

|                                    |              |                     |
|------------------------------------|--------------|---------------------|
| <i>Martin</i> , for the Plaintiff. | } Pledges of | { <i>John Doe</i> . |
| <i>Peters</i> , for the Defendant. |              |                     |

*Mr George Saunders*;

Notice.

I am informed that you are in Possession of, or claim Title to, the Premises mentioned in this Declaration of Ejectment, or to some Part thereof; and I, being sued in this Action as a casual Ejector, and having no Claim or Title to the same, do advise you to appear next *Hilary* Term in his Majesty's Court of *King's Bench* at *Westminster*, by some Attorney of that Court, and then and there, by a Rule to be made of the same Court, to cause yourself to be made Defendant in my Stead; otherwise I shall suffer

suffer Judgment to be entered against me, and you will be turned out of Possession.

N<sup>o</sup>. IX.

Your loving Friend,

5 January, 1756.

William Stiles.

§. 3. *The Rule of Court.*

Hilary Term, in the twenty ninth Year of King  
GEORGE the second.

*Berks,* } It is ordered by the Court, by the Assent *Smith against*  
to wit. } of both Parties, and their Attorneys, that *Stiles*; for one  
*George Saunders*, Gentleman, may be made Defendant, the Appurtenan-  
in the place of the now Defendant *William Stiles*, and ces, in *Sutton*,  
shall immediately appear to the Plaintiff's Action, and on the Demise of  
shall receive a Declaration in a Plea of Trespass and Eject- *John Rogers*.  
ment of the Tenements in question, and shall immedi-  
ately plead thereto, Not Guilty: And, upon the Trial  
of the issue, shall confess Lease, Entry, and Outter, and  
insist upon his Title only. And if, upon Trial of the  
Issue, the said *George* do not confess Lease, Entry, and  
Outter, and by reason thereof the Plaintiff cannot prose-  
cute his Writ, then the Taxation of Costs upon such *Non-*  
*prof.* shall cease, and the said *George* shall pay such Costs  
to the Plaintiff, as by the Court of our Lord the King  
here shall be taxed and adjudged for such his Default in  
Nonperformance of this Rule; and Judgment shall be  
entered against the said *William Stiles*, now the casual  
Ejector, by Default. And it is further ordered, that, if  
upon the Trial of the said issue a Verdict shall be given  
for the Defendant, or if the Plaintiff shall not prosecute his  
Writ, upon any other Cause, than for the not confessing  
Lease, Entry, and Outter as aforesaid, then the Lessor of  
the Plaintiff shall pay Costs, if the Plaintiff himself doh  
not pay them.

By the Court.

*Martin*, for the Plaintiff.

*Newman*, for the Defendant.

§. 4. *The*



N<sup>o</sup>. IX.§. 4. *The Record.*

**P**leas before the Lord the King at *Westminster*, of the Term of Saint *Hilary*, in the twenty ninth Year of the Reign of the Lord *GEORGE* the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, &c.

Declaration, of  
Count,

*Berks, } George Saunders, late of Sutton in the Coun-*  
to wit. *} ty aforesaid, Gentleman, was attached to*  
answer *Richard Smith*, of a Plea, wherefore with Force and Arms he entered into one Messuage, with the Appurtenances, in *Sutton*, which *John Rogers*, Esquire, hath demised to the said *Richard* for a Term which is not yet expired, and ejected him from his said Farm, and other Wrongs to him did, to the great Damage of the said *Richard*, and against the Peace of the Lord the King that now is. **And wherupon** the said *Richard* by *Robert Martin* his Attorney complains, that whereas the said *John Rogers* on the first Day of *October* in the twenty ninth Year of the Reign of the lord the King that now is, at *Sutton* aforesaid, had demised to the same *Richard* the Tenement aforesaid, with the Appurtenances, to have and to hold the said Tenement, with the Appurtenances, to the said *Richard* and his Assigns, from the Feast of Saint *Michael* the Archangel then last past, to the End and Term of five Years from thence next following and fully to be complete and ended; by virtue of which Demise the said *Richard* entered into the said Tenement, with the Appurtenances, and was thereof possessed: and, the said *Richard* being so possessed thereof, the said *George* afterwards, that is to say, on the first Day of *October* in the said twenty ninth Year, with Force and Arms, that is to say, with Swords, Staves, and Knives, entered into the said Tenement, with the Appurtenances, which the said *John Rogers* demised to the said *Richard* in Form aforesaid for the Term aforesaid which is not yet expired, and ejected the said *Richard* out of his said Farm, and other Wrongs to him did, to the great Damage of the said *Richard*, and against the Peace of the said Lord the King; whereby the said *Richard* saith that he is injured and endamaged to the Value of twenty Pounds: And thereupon he brings Suit, [and good Proof.] **And** the aforesaid *George Saunders*, by

Defence,

*Charles*

*Charles Newman* his Attorney, comes and defends the Force and Injury, when [and where it shall behove him;] and saith that he is in no wise guilty of the Trespass and Ejectment aforesaid, as the said *Richard* above complains against him; and thereof he puts himself upon Issue. the Country; and the said *Richard* doth likewise the same: **Therefore** let a Jury come thereupon before the Lord the King, on the Octave of the Purification of the Blessed Virgin *Mary*, wheresoever he shall then be in *England*; who neither [are of Kin to the said *Richard*, nor to the said *George*;] to recognize [whether the said *George* be guilty of the Trespass and Ejectment aforesaid:] Because as well [the said *George*, as the said *Richard*, between whom the Difference is, have put themselves on the said Jury.] The same Day is there given to the Parties aforesaid. **Afterwards** the Process therein, being continued between the said Parties of the Plea aforesaid by the Jury, is put between them in Respite, before the Lord the King, until the Day of *Easter*, in fifteen Days, wheresoever the said Lord the King shall then be in *England*; unless the Justices of the Lord the King assigned to take Assises in the County aforesaid, shall have come before that time, to wit, on *Monday* the eighth Day of *March*, at *Reading* in the said County, by the form of the Statute [in that case provided,] by reason of the Default of the Jurors, [summoned to appear as aforesaid.] At which Day before the Lord the King, at *Westminster*, come the Parties aforesaid by their Attorneys aforesaid; and the aforesaid Justices of Assise, before whom [the Jury aforesaid came,] sent here their Record before them had in these Words, to wit: **Afterwards**, at the Day and Place within contained, before *Heneage Legge*, Esquire, one of the Barons of the Exchequer of the Lord the King, and Sir *John Eardly Wilmot*, Knight, one of the Justices of the said Lord the King, assigned to hold Pleas before the King himself, Justices of the said Lord the King, assigned to take Assises in the County of *Berks* by the form of the Statute [in that case provided,] come as well the within named *Richard Smith*, as the within written *George Saunders*, by their Attorneys within contained; and the Jurors of the Jury whereof Mention is within made being called, certain of them, to wit, *Charles Holloway*, *John Hooke*, *Peter Grabam*, *Henry Cox*, *William Browne*, and *Francis Oakly*, come, and are sworn upon that Jury: And because the rest of the Jurors

N<sup>o</sup>. IX.

Plea, Not Guilty.

Verdict awarded.

Respite, for Default of Jurors.

Nisi Prius.

Postea.

of

N<sup>o</sup>. IX.

*Talis de Circum-  
stantiis.*

Verdict, for the  
Plaintiff.

Motion in Arrest  
of Judgment.

Continuance.

of the same Jury did not appear, therefore others of the Bystanders being chosen by the Sheriff, at the Request of the said *Richard Smith*, and by the Command of the Justices aforesaid, are appointed a-new, whose Names are affixed to the Panel within written, according to the Form of the Statute in such Case made and provided; which said Jurors so appointed a-new, to wit, *Roger Bacon, Thomas Small, Charles Pye, Edward Hawkins, Samuel Roberts, and Daniel Parker*, being likewise called, come; and, together with the other Jurors aforesaid before impanelled and sworn, being elected, tried, and sworn, to speak the Truth of the Matter within contained, upon their Oath say, that the aforesaid *George Saunders* is guilty of the Trespass and Ejectment within-written, in Manner and Form as the aforesaid *Richard Smith* within complains against him; and assess the Damages of the said *Richard Smith*, on Occasion of that Trespass and Ejectment, besides his costs and Charges which he hath been put unto about his Suit in that Behalf, to twelve Pence: and, for those Costs and Charges, to forty Shillings. Whereupon the said *Richard Smith*, by his Attorney aforesaid, prayeth Judgment against the said *George Saunders*, in and upon the Verdict aforesaid by the Jurors aforesaid given in the Form aforesaid: And the said *George Saunders*, by his Attorney aforesaid, saith that the Court here ought not to proceed to give Judgment upon the said Verdict, and prayeth that Judgment against him the said *George Saunders*, in and upon the Verdict aforesaid by the Jurors aforesaid given in the Form aforesaid, may be stayed, by reason that the said Verdict is insufficient and erroneous, and that the same Verdict may be quashed, and that the Issue aforesaid may be tried a-new by other Jurors to be afresh impanelled. And, because the Court of the Lord the King here is not yet advised of giving their Judgment of and upon the Premises, therefore Day thereof is given as well to the said *Richard Smith* as the said *George Saunders*, before the Lord the King, until the Morrow of the *Ascension* of our Lord, wherefoever the said Lord the King shall then be in *England*, to hear their Judgment of and upon the Premises, for that the Court of the Lord the King is not yet advised thereof. At which Day before the Lord the King, at *Westminster*, come the Parties aforesaid by their Attorneys aforesaid: Upon which, the Record and Matters aforesaid having been seen, and by the Court of the Lord the King now here fully understood,  
and

and all and singular the Premises having been examined, and mature Deliberation being had thereupon, for that it seems to the Court of the Lord the King now here that the Verdict aforesaid is in no wise insufficient or erroneous, and that the same ought not to be quashed, and that no new Trial ought to be had of the Issue aforesaid, ~~wherefore it is considered~~, that the said *Richard* do recover against the said *George* his Term yet to come, of and in the said Tenements, with the Appurtenances, and the said Damages assessed by the said Jury in Form aforesaid, and also twenty seven Pounds six Shillings and eight Pence for his Costs and Charges aforesaid, by the Court of the Lord the King here awarded to the said *Richard*, with his Assent, by way of Increase; which said Damages in the Whole amount to twenty nine Pounds, seven Shillings, and eight Pence. And let the said *George* be taken, [until he maketh Fine to the Lord the King.] And hereupon the said *Richard* by his Attorney aforesaid prayeth a Writ of the Lord the King, to be directed to the Sheriff of the County aforesaid, to cause him to have Possession of his Term aforesaid yet to come, of and in the Tenements aforesaid, with the Appurtenances: And it is granted unto him, returnable before the Lord the King on the Morrow of the *Holy Trinity*, wheresoever he shall then be in *England*. At which Day before the Lord the King, at *Westminster*, cometh the said *Richard* by his Attorney aforesaid; and the Sheriff, that is to say, Sir *Thomas Reeve*, Knight, now sendeth, that he by virtue of the Writ aforesaid to him directed, on the ninth Day of *June* last past, did cause the said *Richard* to have his Possession of his Term aforesaid yet to come, of and in the Tenements aforesaid, with the Appurtenances, as he was commanded,

N<sup>o</sup>. IX.

Opinion of the Court.

Judgment, for the Plaintiff.

Capiatur pro Fine.  
Writ of Possession,

and Return.

N<sup>o</sup>. X.

N<sup>o</sup>. X.

No. X.

*Proceedings on an Action of DEBT, in the Court of  
common Pleas; removed into the King's  
Bench by Writ of ERROR.*

## §. 1. Original.

*Præcipe.*

**G E O R G E** the second by the Grace of God of  
*Great Britain, France, and Ireland King, Defender*  
of the Faith, and so forth; to the Sheriff of *Oxford-*  
*shire*, Greeting. **Command** *Charles Long*, late of *Bur-*  
*ford*, Gentleman, that justly and without delay he render  
to *William Burton* two hundred Pounds, which he owes  
him and unjustly detains, as he saith. And unless he shall  
so do, and if the said *William* shall make you secure of  
prosecuting his Claim, then summon by good Summoners  
the aforesaid *Charles*, that he be before our Justices at  
*Westminster*, on the Octave of Saint *Hilary*, to shew  
wherefore he hath not done it. And have you there then  
the Summoners, and this Writ. **Witness** Ourself at *West-*  
*minster*, the twenty fourth Day of *December*, in the twenty  
eighth Year of our Reign.

|                   |                       |                         |
|-------------------|-----------------------|-------------------------|
| Sheriff's Return. | Pledges of            | Summoners of            |
| Prosecu-          | { <i>John Doe.</i>    | { the within-           |
| tion,             | { <i>Richard Roe.</i> | { named <i>Charles</i>  |
|                   |                       | { <i>Roger Morris.</i>  |
|                   |                       | { <i>Henry Johnson.</i> |
|                   |                       | <i>Long.</i>            |

## §. 2. Process.

*Attachment.**Post.*

**G E O R G E** the second by the Grace of God of  
*Great Britain, France, and Ireland King, Defender*  
of the Faith, and so forth; to the Sheriff of *Oxfordshire*,  
Greeting. **But** by Gage and safe Pledges *Charles Long*,  
late of *Burford*, Gentleman, that he be before our Justices  
at *Westminster* on the Octave of the Purification of the  
blessed *Mary*, to answer to *William Burton* of a Plea, that  
he render to him two hundred Pounds, which he owes  
him and unjustly detains, as he saith; And to shew where-  
fore

fore he was not before our Justices at *Westminster* on the Octave of Saint *Hilary*, as he was summoned. And have there then the Names of the Pledges and this Writ. *Witness* Sir *John Willes*, Knight, at *Westminster*, the twenty third Day of *January* in the twenty eighth Year of our Reign.

Nº. X.

The within named *Charles Long* is { *Edward Leigh*. Sheriff's Return,  
attached by Pledges, { *Robert Tanner*.

WE the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to the Sheriff of *Oxfordshire*, Greeting. We command you that you distrein *Charles Long*, late of *Burford*, Gentleman, by all his Lands and Chattels within your Bailiwick, so that neither he nor any one through him may lay hands on the same, until you shall receive from Us another Command thereupon; and that you answer to Us of the Issues of the same; and that you have his Body before our Justices at *Westminster* from the Day of *Easter* in fifteen Days, to answer to *William Burton* of a Plea, that he render to him two hundred Pounds which he owes him and unjustly detains, as he saith, and to hear his Judgment of his many Defaults. *Witness* Sir *John Willes*, Knight, at *Westminster*, the twelfth day of *February* in the twenty eighth Year of our Reign.

The within-named *Charles Long* hath nothing in my Sheriff's Return; Bailiwick, whereby he may be distreined. *Nil.*

WE the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to the Sheriff of *Oxfordshire*, Greeting. We command you, that you take *Charles Long* late of *Burford*, Gentleman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before our Justices at *Westminster*, from the day of *Easter* in five Weeks, to answer to *William Burton*, Gentleman, of a Plea, that he render to him two hundred Pounds, which he owes him and unjustly detains, as he saith: and whereupon you have returned to our Justices at *Westminster* that the said *Charles* hath nothing in your Bailiwick, whereby he may be distreined. And have you there then this Writ. *Witness* Sir *John Willes*, Knight,

*Capias ad respondendum.*

N<sup>o</sup>. X. Knight, at *Westminster*, the sixteenth Day of *April*, in the twenty eighth Year of our Reign.

Sheriff's Return; The withinnamed *Charles Long* is not found in my  
*Non est inventus.* Bailiwick.

*Totum Capias.* **G E O R G E** the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to the Sheriff of *Berkshire*, Greeting. We command you, that you take *Charles Long*, late of *Burford*, Gentleman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before our Justices at *Westminster*, on the Morrow of the holy *Trinity*, to answer to *William Burton*, Gentleman, of a Plea, that he render to him two hundred Pounds, which he owes him and unjustly detains, as he saith: And whereupon our Sheriff of *Oxfordshire* hath made a Return to our Justices at *Westminster*, at a certain Day now past, that the aforesaid *Charles* is not found in his Bailiwick; and thereupon it is testified in our said Court, that the aforesaid *Charles* lurks, wanders, and runs about in your County. And have you there then this Writ. *Witness* Sir *John Willis*, Knight, at *Westminster*, the seventh Day of *May*, in the twenty eighth Year of our Reign.

Sheriff's Return; By Virtue of this Writ to me directed, I have taken  
*Capit Corpus.* the Body of the withinnamed *Charles Long*; which I have ready at the Day and Place withincontained, according as by this Writ it is commanded me.

"Or, upon the Return of *Non est inventus* upon the first  
 "Capias, the Plaintiff may sue out an Alias and a  
 "Plurics, and thence proceed to Outlawry; thus:

*Alias Capias.* **G E O R G E** the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to the Sheriff of *Oxfordshire*, Greeting. We command you, as formerly we commanded you, that you take *Charles Long*, late of *Burford*, Gentleman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before our Justices at *Westminster*, on the Morrow of the holy *Trinity*, to answer to *William Burton*, Gentleman,  
 "of

"of a Plea, that he render to him two hundred Pounds;  
"which he owes him and unjustly detains, as he saith.  
"And have you there then this Writ. *Witness* Sir *John*  
"*Willes*, Knight, at *Westminster*, the seventh Day of *May*;  
"in the twenty eighth Year of our Reign.

No. X.

"The within-named *Charles Long* is not found in my "Sheriff's Return;  
"Bailiwick. "Non est inventus.

"*GEORGE* the second by the Grace of God of " *Pluria Capias*.  
" *Great Britain, France, and Ireland* King, Defender of  
"the Faith, and so forth; to the Sheriff of *Oxfordshire*,  
"Greeting. *We* command you, as we have more than  
"once commanded you, that you take *Charles Long*, late  
"of *Burford*, Gentleman, if he may be found in your  
"Bailiwick, and him safely keep, so that you may have his  
"Body before our Justices at *Westminster*, from the Day  
"of the holy *Trinity* in three Weeks, to answer to *William*  
"*Burton*, Gentleman, of a Plea, that he render to him  
"two hundred Pounds, which he owes him and unjustly  
"detains, as he saith. And have you there then this Writ.  
"*Witness* Sir *John Willes*, Knight, at *Westminster*, the  
"thirtieth Day of *May*, in the twenty eighth Year of our  
"Reign.

"The within-named *Charles Long* is not found in my "Sheriff's Return;  
"Bailiwick. "Non est inventus.

"*GEORGE* the second by the Grace of God of " *Exigi facias*.  
" *Great Britain, France, and Ireland* King, Defender of  
"the Faith, and so forth; to the Sheriff of *Oxfordshire*,  
"Greeting. *We* command you, that you cause *Charles*  
"*Long*, late of *Burford*, Gentleman, to be required from  
"County Court to County Court, until according to the  
"Law and Custom of our Realm of *England* he be out-  
"lawed, if he doth not appear. And if he doth appear,  
"then take him and cause him to be safely kept, so that  
"you may have his Body before our Justices at *Westmin-*  
"*ster*, on the Morrow of *All Souls*, to answer to *William*  
"*Burton*, Gentleman, of a Plea, that he render to him  
"two hundred Pounds, which he owes him and unjustly  
"detains, as he saith: And whereupon you have return-  
"ed to our Justices at *Westminster*, from the Day of the  
"holy *Trinity* in three Weeks, that he is not found in your  
"Baili-



N<sup>o</sup>. X.

“Bailiwick. And have you there then this Writ. ~~Writ~~  
 “~~ness~~ Sir *John Willes*, Knight, at *Westminster*, the eigh-  
 “teenth Day of *June*, in the twenty eighth Year of our  
 “Reign.

“*Sheriff's Return*; “By Virtue of this Writ to me directed, at my Coun-  
 “*Primo exactus*: “ty Court held at *Oxford* in the County of *Oxford*, on  
 “*Thursday* the twenty first Day of *June* in the twenty  
 “ninth Year of the Reign of the Lord the King within  
 “written, the within-named *Charles Long* was required the  
 “*Secundo exactus*: “first time, and did not appear: And at my County Court  
 “held at *Oxford* aforesaid, on *Thursday* the twenty fourth  
 “Day of *July* in the Year aforesaid, the said *Charles Long*  
 “*Tertio exactus*: “was required the second time, and did not appear: And  
 “at my County Court held at *Oxford* aforesaid, on *Thurs-*  
 “*day* the twenty first Day of *August* in the Year aforesaid,  
 “the said *Charles Long* was required the third time, and  
 “*Quarto exactus*: “did not appear: And at my County Court held at *Ox-*  
 “*ford* aforesaid, on *Thursday* the eighteenth Day of *Sep-*  
 “*tember* in the Year aforesaid, the said *Charles Long* was  
 “*Quinto exactus*: “required the fourth time, and did not appear: And at  
 “my County Court held at *Oxford* aforesaid, on *Thursday*  
 “the sixteenth Day of *October* in the Year aforesaid, the  
 “said *Charles Long* was required the fifth time, and did  
 “*Idco Utlagatus*: “not appear: Therefore the said *Charles Long*, by the  
 “Judgment of the Coroners of the said Lord the King, of  
 “the County aforesaid, according to the Law and Custom  
 “of the Kingdom of *England*, is outlawed.

“Writ of Procla- “**EDWARD** the second by the Grace of God of  
 “mation, “*Great Britain, France, and Ireland* King, Defender of  
 “the Faith, and so forth; to the Sheriff of *Oxfordshire*,  
 “Greeting, ~~Whereas~~ by our Writ We have lately com-  
 “manded You that you should cause *Charles Long*, late of  
 “*Burford*, Gentleman, to be required from County Court  
 “to County Court, until according to the Law and Cus-  
 “tom of our Realm of *England* he should be outlawed, if  
 “he did not appear: And if he did appear, then that you  
 “should take him and cause him to be safely kept, so that  
 “you might have his Body before our Justices at *Westmin-*  
 “*ster*, on the Morrow of *All-Souls*, to answer to *William*  
 “*Burton*, Gentleman, of a Plea, that he render to him  
 “two hundred Pounds, which he owes him and unjustly  
 “detains,

"detains, as he saith: ~~Therefore~~ we command you,  
 "by virtue of the Statute in the thirty first Year of the  
 "Lady *Elizabeth* late Queen of *England* made and provi-  
 "ded, that you cause the said *Charles Long* to be proclaim-  
 "ed upon three several Days according to the form of that  
 "Statute; (whereof one Proclamation shall be made at or  
 "near the most usual Door of the Church of the Parish  
 "wherein he inhabits) that he render himself unto you;  
 "so that you may have his Body before our Justices at  
 "*Westminster* at the Day aforesaid, to answer the said *Wil-*  
 "*liam Burton* of the Plea aforesaid. And have you there  
 "then this Writ. **Witness** Sir *John Willes*, Knight, at  
 "*Westminster*, the eighteenth Day of *June*, in the twenty  
 "eighth Year of our Reign.

"By Virtue of this Writ to me directed, at my County "Sheriff's Re-  
 "Court held at *Oxford* in the County of *Oxford*, on "turn; Procla-  
 "*Thursday* the twenty sixth Day of *June* in the twenty "mari feci.  
 "ninth Year of the Reign of the Lord the King within  
 "written, I caused to be proclaimed the first time; And  
 "at the general Quarter Sessions of the Peace, held at *Ox-*  
 "*ford* aforesaid on *Tuesday* the fifteenth Day of *July* in the  
 "Year aforesaid, I caused to be proclaimed the second  
 "time; And at the most usual Door of the Church of  
 "*Burford* within-written on *Sunday* the third Day of *Aug-*  
 "*ust* in the Year aforesaid, immediately after divine Ser-  
 "vice, one month at the least before the within-named.  
 "*Charles Long* was required the fifth time, I caused to be  
 "proclaimed the third time, that the said *Charles Long*  
 "should render himself unto me; as within it is command-  
 "ed me.

"**G E O R G E** the second by the Grace of God of "*Copias Usages*  
 "Great Britain, France, and Ireland King, Defender, "tum.  
 "of the Faith, and so forth; to the Sheriff of *Berkshire*,  
 "Greeting. **We** command you, that you omit not by  
 "reason of any Liberty of your County, but that you  
 "take *Charles Long*, late of *Burford* in the County of *Ox-*  
 "*ford*, Gentleman, (being outlawed in the said County of  
 "*Oxford*, on *Thursday*, the sixteenth Day of *October* last  
 "past, at the Suit of *William Burton*, Gentleman, of a  
 "Plea of Debt, as the Sheriff of *Oxfordshire* aforesaid re-  
 "turned to our Justices at *Westminster* on the Morrow of  
 "*All-Souls* then next ensuing) if the said *Charles Long* may  
 "be

N<sup>o</sup>. X.

“ be found in your Bailiwick ; and him safely keep, so that  
 “ you may have his Body before our Justices at *Westmin-*  
 “ *ster* from the Day of Saint *Martin* in fifteen Days, to do  
 “ and receive what our Court shall consider concerning  
 “ him in this behalf. ~~Witness~~ Sir *John Willis*, Knight,  
 “ at *Westminster*, the sixth Day of *November* in the twenty  
 “ ninth year of our Reign.

“ Sheriff's Re-  
 “ turn; Capi  
 “ Corpus.

“ By Virtue of this Writ to me directed, I have taken  
 “ the Body of the within-named *Charles Long*; which I  
 “ have ready at the Day and Place within-contained, ac-  
 “ cording as by this Writ it is commanded me.

“ §. 3. \* *Bill of Middlesex, and Latitat thereupon, in the*  
 “ *Court of King's Bench.*

“ Bill of Middle-  
 “ sex, for Tru-  
 “ pacy.

“ *action* in Debt.

“ *Middlesex*, } “ The Sheriff is commanded that he  
 “ to wit. } “ take *Charles Long*, late of *Burford* in  
 “ the County of *Oxford*, if he may be found in his Baili-  
 “ wick, and him safely keep, so that he may have his Ro-  
 “ dy before the Lord the King at *Westminster*, on *Wednes-*  
 “ day next after fifteen Days of *Easter*, to answer *William*  
 “ *Burton*, Gentleman, of a Plea of *Trespas*; [and also  
 “ to a Bill of the said *William* against the aforesaid *Charles*,  
 “ for two hundred Pounds of Debt, according to the  
 “ Custom of the Court of the said Lord the King, before  
 “ the King himself to be exhibited;] and that he have  
 “ there then this Precept.

“ Sheriff's Re-  
 “ turn; non est  
 “ inventus.


“ Latitat.

“ The within-named *Charles Long* is not found in my  
 “ Bailiwick.

“ ~~Witness~~ the second by the Grace of God of  
 “ Great Britain, France, and Ireland King, Defender  
 “ of the Faith, and so forth; to the Sheriff of *Berkshire*,  
 “ Greeting. Whereas We lately commanded our Sheriff  
 “ of *Middlesex* that he should take *Charles Long*, late of  
 “ *Burford* in the County of *Oxford*, if he might be found  
 “ in his Bailiwick, and him safely keep, so that he might


\* Note, that §. 3. and §. 4. are the usual Method of Process, to  
 compel an Appearance in the Courts of *King's Bench*, and *Exchequer*; in  
 which the Practice of those Courts does principally differ from that of the  
 Court of *Common Pleas*: The subsequent Stages of Proceeding being nearly  
 alike in them all.

“ he

“ be before Us at *Westminster*, at a certain Day now past, N<sup>o</sup>. X.  
 “ to answer unto *William Burton*, Gentleman, of a Plea   
 “ of Trespass; [and also to a Bill of the said *William* *de viam*.  
 “ against the aforesaid *Charles*, for two hundred Pounds  
 “ of Debt, according to the Custom of our Court, before  
 “ Us to be exhibited;] and our said Sheriff of *Middlesex*  
 “ at that Day returned to Us that the aforesaid *Charles* was  
 “ not found in his Bailiwick; Whereupon on the Behalf  
 “ of the aforesaid *William* in our Court before Us it is  
 “ sufficiently attested, that the aforesaid *Charles* lurks and  
 “ runs about in your County: Therefore We command  
 “ you, that you take him, if he may be found in your  
 “ Bailiwick, and him safely keep, so that you may have  
 “ his Body before Us at *Westminster* on *Tuesday* next after  
 “ five Weeks of *Easter*, to answer to the aforesaid *William*  
 “ of the Plea [and Bill] aforesaid: And have you there  
 “ then this Writ. *Witness* Sir *Dudley Ryder*, Knight, at  
 “ *Westminster*, the eighteenth Day of *April*, in the twenty  
 “ eighth Year of our Reign.

“ By virtue of this Writ to me directed, I have taken “ Sheriff’s Re-  
 “ the Body of the within-named *Charles Long*; which I “ turn; *Copi Cor*  
 “ have ready at the Day and Place within-contained, ac- “ put  
 “ cording as by this Writ it is commanded me.

“ §. 4. *Writ of Quo minus in the Exchequer.*

“  the second by the Grace of God of  
 “ Great Britain, France, and Ireland King, Defender  
 “ of the Faith, and so forth; to the Sheriff of *Berkshire*,  
 “ Greeting. We command you, that you omit not by  
 “ reason of any Liberty of your County, but that you  
 “ enter the same, and take *Charles Long*, late of *Barford*  
 “ in the County of *Oxford*, Gentleman, wheresoever he  
 “ shall be found in your Bailiwick, and him safely keep,  
 “ so that you may have his Body before the Barons of our  
 “ Exchequer at *Westminster*, on the Morrow of the holy  
 “ *Trinity*, to answer *William Barton* our Debtor of a Plea,  
 “ that he render to him two hundred Pounds which he  
 “ owes him and unjustly detains, whereby he is the less  
 “ able to satisfy Us the Debts which he owes Us at our  
 “ said Exchequer, as he saith he can reasonably shew that  
 “ the same he ought to render: And have you there this  
 “ Writ. *Witness* Sir *Thomas Parker*, Knight, at *West-*  
 “ *minster*,  
 “ Q a

N<sup>o</sup>. X.

"*minster*, the sixth Day of *May*, in the twenty eighth Year  
"of our reign.

" Sheriff's Re-  
" turn; Capi Cor-  
" pus.

" By Virtue of this Writ to me directed; I have taken  
" the Body of the within-named *Charles Long*; which I  
" have ready before the Barons within-written, according  
" as within it is commanded me."

§. 5. *Special Bail; on the Arrest of the Defendant, pursuant  
to the Testatum Capias, in page 206.*

Bail-Bond, to the  
Sheriff.

Know all Men by these Presents, that We *Charles Long of Burford* in the County of *Oxford*, Gentleman, *Peter Hammond* of *Bix* in the said County, Yeoman, and *Edward Thomlinson* of *Woodstock* in the said County, Innholder, are held and firmly bound to *Christopher Jones*, Esquire, Sheriff of the County of *Berks*, in four hundred Pounds of lawful Money of *Great Britain*, to be paid to the said Sheriff, or his certain Attorney, Executors, Administrators, or Assigns; for which Payment well and truly to be made, We bind ourselves and each of us by himself for the Whole and in Gross, our and every of our Heirs, Executors, and Administrators, firmly by these Presents, sealed with our Seals. Dated the fifteenth Day of *May* in the twenty eighth Year of the Reign of our sovereign Lord *George* the second by the Grace of God King of *Great Britain, France, and Ireland*, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and fifty five.

The Condition of this Obligation is such, that if the above-bounden *Charles Long* do appear before the Justices of our sovereign Lord the King at *Westminster*, on the Morrow of the holy *Trinity*, to answer *William Burton*, Gentleman, of a Plea of Debt of two hundred Pounds, then this Obligation shall be void and of none Effect, or else shall be and remain in full Force and Virtue.

Sealed, and delivered, being *Charles Long*. (L. S.)  
first duly stamped, in the *Peter Hammond*. (L. S.)  
presence of *Edward Thomlinson*. (L. S.)  
*Henry Shaw*.  
*Timothy Griffith*.

You

**You Charles Long** do acknowledge to owe unto the Plaintiff four hundred Pounds, and you **John Rose** and **Peter Hammond** do severally acknowledge to owe unto the same Person the Sum of two hundred Pounds apiece, to be levied upon your several Goods and Chattels, Lands and Tenements, upon Condition that, if the Defendant be condemned in this Action, he shall pay the Condemnation, or render himself a Prisoner in the Fleet for the same; and, if he fail so to do, you **John Rose** and **Peter Hammond** do undertake to do it for him.

N<sup>o</sup>. X.

Recognizance of Bail, before the Commissioner.

*Trinity Term, 28 GEO. 2.*

**Berks,** } On a *Tessatum Capias* against **Charles Long**, Bail-piece.  
to wit, } late of **Burford** in the County of **Oxford**,  
Gentleman, returnable on the Morrow of the holy *Trinity*, at the Suit of **William Burton**, of a Plea of Debt of two hundred Pounds;

The Bail are, **John Rose**, of **Witney** in the County of **Oxford**, Esquire.

**Peter Hammond**, of **Bix** in the said County, Yeoman.

**Richard Price**, Attorney }  
for the Defendant.

The Party himself in £. 400.

Each of the Bail in £. 200.

Taken and acknowledged the twenty eighth Day of *May*, in the Year of our Lord one thousand, seven hundred, and fifty five, *de bene esse*, before me

**Robert Grove**,  
one of the Commissioners.

§. 6. *The Record, as removed by Writ of Error.*

The Lord the King hath given in Charge to his trusty and beloved Sir **John Willes**, Knight, his Writ closed in these Words: **GEORGE** the second by the Grace of Writ of Error, God of Great Britain, France, and Ireland King, Defender of the Faith, and so forth; to our trusty and beloved Sir **John Willes**, Knight, Greeting. **Because** in the Record, and Process, and also in the Giving of Judgment, of the Plaint which was in our Court before you, and your Fellows, our Justices of the Bench, by our Writ,

**Nr. X.**

between *William Burton*, Gentleman, and *Charles Long*, late of *Burford* in the County of *Oxford*, Gentleman, of a certain Debt of two hundred Pounds, which the said *William* demands of the said *Charles*, manifest Error hath intervened, to the great Damage of him the said *William*, as we from his Complaint are informed: We, being willing that the Error, if any there be, should be corrected in due Manner, and that full and speedy Justice should be done to the Parties aforesaid in this Behalf, do command you, that, if Judgment thereof be given, then under your Seal you do distinctly and openly send the Record and Process of the Plaint aforesaid, with all Things concerning them, and this Writ; so that We may have them from the Day of *Easter* in fifteen Days, wheresoever We shall then be in *England*; that, the Record and Process aforesaid being inspected. We may cause to be done thereupon, for correcting that Error, what of Right and according to the Law and Custom of our Realm of *England* ought to be done. *Witness* Ourself at *Westminster*, the twelfth Day of *February*, in the twenty ninth Year of our Reign.

Chief Justice's  
Return.

The Record and Process, wherof in the said Writ Mention above is made, follow in these Words, to wit:

The Record.

*Pleas* at *Westminster* before Sir *John Willel*, Knight, and his Brethren, Justices of the Bench of the Lord the King at *Westminster*, of the Term of the holy *Trinity*, in the twenty eighth Year of the Reign of the Lord *GEORGE* the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, &c.

*Writ*

*Oxon*, } *Charles Long*, late of *Burford* in the County of *Oxon*, }  
to wit. } ty aforesaid, Gentleman, was summoned to answer *William Burton* of *Yarmen* in the said County, Gentleman, of a Plea that he render unto him two hundred Pounds, which he owes him and unjustly detains, [as he saith.] And whereupon the said *William*, by *Thomas Gough* his Attorney, complains, that whereas on the first Day of *December*, in the Year of our Lord one thousand, seven hundred, and fifty four, at *Bambury* in this County, the said *Charles* by his Writing obligatory did acknowledge himself to be bound to the said *William* in the said Sum of two hundred Pounds of lawful Money of *Great Britain*, to be paid to the said *William*, when-  
ever

Declaration, or  
Count, on a  
Bond.

ever after the said *Charles* should be thereto required; nevertheless the said *Charles* (although often required) hath not paid to the said *William* the said Sum of two hundred Pounds, nor any Part thereof, but hitherto altogether hath refused, and doeth still refuse, to render the same; wherefore he saith that he is injured, and hath Damage, to the Value of ten Pounds: And thereupon he brings Suit, [and good Proof.] And he brings here into Court *Profert in Curia* the Writing obligatory aforesaid; which testifies the Debt aforesaid in Form aforesaid; the Date whereof is the Day and Year before-mentioned. And the aforesaid *Charles*, by Defence, *Richard Price* his Attorney, comes and defends the Force and Injury when [and where it shall behove him,] and craves Oyer of the said Writing obligatory, and it is read unto him [in the Form aforesaid:] He likewise craves Oyer of the Condition of the said Writing, and it is read unto him in these Words: "The Condition of this Obligation is such, that if the above bounden *Charles Long*, his Heirs, Executors, and Administrators, and every of them, shall and do from Time to Time, and at all Times hereafter, well and truly stand to, obey, observe, fulfill, and keep, the Award, Arbitrament, Order, Rule, Judgment, final End, and Determination, of *David Stiles*, of *Woodstock* in the said County, Clerk, and *Henry Bacon* of *Woodstock* aforesaid, Gentleman, (Arbitrators indifferently nominated and chosen by and between the said *Charles Long* and the abovenamed *William Burton*, to arbitrate, award, order, rule, judge, and determine, of all and all manner of Actions, Cause or Causes of Action, Suits, Complaints, Debts, Duties, Reckonings, Accounts, Controversies, Trespasses, and Demands whatsoever had, moved, or depending, or which might have been had, moved, or depending, by and between the said Parties, for any Matter, Cause, or Thing, from the Beginning of the World until the Day of the Date hereof) which the said Arbitrators shall make and publish, of or in the Premises, in Writing under their Hands and Seals, or otherwise by Word of Mouth, in the presence of two credible Witnesses, on or before the first Day of *January* next ensuing the Date hereof; then this Obligation to be void and of none Effect, or else to be and remain in full Force and Virtue." Which being read and heard, the said *Charles* *Imparlane*, prays leave to imparl therein here until the Oave of the holy

Oyer prayed of the Bond, and Condition, viz. to perform an Award.



N<sup>o</sup>. X:  
  
 Continuance.

Plea;  
 No such Award.

Replication;  
 setting forth an  
 Award.

holy *Trinity*; and it is granted unto him. The same Day is given to the said *William Burton* here, &c. At which Day, to wit, on the Oſtave of the holy *Trinity*, here come as well the said *William Burton* as the said *Charles Long*, by their Attorneys aforeſaid: And hereupon the said *William* prays that the said *Charles* may answer to his Writ and Count aforeſaid. And the aforeſaid *Charles* defends the Force and Injury, when, &c, and ſaith, that the said *William* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that the ſaid *David Stiles* and *Henry Bacon*, the Arbitrators before named in the ſaid Condition, did not make any ſuch Award, Arbitrament, Order, Rule, Judgment, final End, or Determination, of or in the Premises above ſpecified in the ſaid Condition, on or before the firſt Day of *January*, in the Condition aforeſaid above mentioned, according to the Form and Effect of the ſaid Condition: And this he is ready to verify. Wherefore he prays Judgment, whether the ſaid *William* ought to have or maintain his ſaid Action thereof againſt him; [and that he may go thereof without a Day.] And the aforeſaid *William* ſaith, that, for any thing above alleged by the ſaid *Charles* in Pleading, he ought not to be precluded from having his ſaid Action thereof againſt him; becauſe he ſaith, that after the making of the ſaid Writing obligatory, and before the ſaid firſt Day of *January*, to wit, on the twenty ſixth Day of *December*, in the Year aforeſaid, at *Banbury* aforeſaid, in the Preſence of two credible Witneſſes, namely, *John Dew* of *Charlbury*, in the County aforeſaid, and *Richard Morris* of *Wytham* in the County of *Berks*, the ſaid Arbitrators undertook the Charge of the Award, Arbitrament, Order, Rule, Judgment, final End, and Determination aforeſaid, of and in the Premises ſpecified in the Condition aforeſaid; and then and there made and publiſhed their Award by Word of Mouth in Manner and Form following, that is to ſay; The ſaid Arbitrators did award, order, and adjudge, that he the ſaid *Charles Long* ſhould forthwith pay to the ſaid *William Burton* the Sum of ſeventy five Pounds, and that thereupon all Differences between them at the time of the making the ſaid Writing obligatory ſhould finally ceaſe and determine. And the ſaid *William* further ſaith, that although he afterwards, to wit on the ſixth Day of *January*, in the Year of our Lord one thouſand, ſeven hundred, and fifty five, at *Banbury* aforeſaid, requeſted the ſaid  
*Charles*

*Charles* to pay to him the said *William* the said seventy five pounds, yet (by Protestation that the said *Charles* hath not stood to, obeyed, observed, fulfilled, or kept any part of the said Award; which by him the said *Charles* ought to have been stood to, obeyed, observed, fulfilled, and kept) for further Plea therein he saith, that the said *Charles* the said seventy five Pounds to the said *William* hath not hitherto paid: And this he is ready to verify. Wherefore he prays Judgment, and his Debt aforesaid, together with his Damages occasioned by the Detention of the said Debt, to be adjudged unto him, &c. **And** the aforesaid *Charles* saith, that the Plea aforesaid, by him the said *William* in Manner and Form aforesaid above in his Replication pleaded, and the Matter in the same contained, are in no wise sufficient in Law for the said *William* to have or maintain his Action aforesaid thereupon against him the said *Charles*; to which the said *Charles* hath no Necessity, neither is he obliged by the Law of the Land, in any manner to answer: And this he is ready to verify. Wherefore, for want of a sufficient Replication in this behalf, the said *Charles*, as aforesaid, prays Judgment, and that the aforesaid *William* may be precluded from having his Action aforesaid thereupon against him, &c. And the said *Charles*, according to the form of the Statute in that case made rec. and provided, shews to the Court here the causes of Demurrer following; to wit, that it doth not appear, by the Replication aforesaid, that the said Arbitrators made the same Award in the presence of two credible Witnesses on or before the said first Day of *January*, as they ought to have done, according to the Form and Effect of the Condition aforesaid; and that the Replication aforesaid is uncertain, insufficient, and wants Form. **And** the aforesaid *William* saith, that the Plea aforesaid by him the said *William* in Manner and Form aforesaid above in his Replication pleaded, and the Matter in the same contained, are good and sufficient in Law for the said *William* to have and maintain the said Action of him the said *William* thereupon against the said *Charles*; which said Plea, and the Matter therein contained, the said *William* is ready to verify and prove as the Court shall Award: And because the aforesaid *Charles* hath not answered to that Plea, nor hath he hitherto in any manner denied the same, the said *William* as before prays Judgment, and his Debt aforesaid, together with his Damages occasioned by the Detention of that

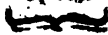
No. X.

Protestando.

Demurres.

Causes of Demur.

Joinder in Demurres.

**N<sup>o</sup>. X.**  
  
 Continuance.

that Debt, to be adjoined unto him, &c. And because the Justices here will advise themselves of and upon the Premises before they give Judgment thereupon, a Day is thereupon given to the Parties aforesaid here, until the Morrow of *All-Souls*, to hear their Judgment thereupon, for that the said Justices here are not yet advised thereof. At which Day here come as well the said *Charles* as the said *William*, by their said Attorneys; and because the said Justices here will farther advise themselves of and upon the Premises before they give Judgment thereupon, a Day is farther given to the Parties aforesaid here until the Octave of Saint *Quiryn*, to hear their Judgment thereupon, for that the said Justices here are not yet advised thereof. At which Day here come as well the said *William Burton* as the said *Charles Long*, by their said Attorneys: ~~Wherefore~~, the Record and Matters aforesaid having been seen, and by the Justices here fully understood, and all and singular the Premises being examined, and mature Deliberation being had thereupon; for that it seems to the said Justices here, that the said Plea of the said *William Burton* before in his replication pleaded, and the Matter therein contained, are not sufficient in Law, to have and maintain the Action of the aforesaid *William* against the aforesaid *Charles*; therefore it is considered, that the aforesaid *William* take nothing by his Writ aforesaid, but that he and his Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, be in Mercy for his sake Complaint; and that the aforesaid *Charles* go thereof without a Day, &c. And it is farther considered, that the aforesaid *Charles* do recover against the aforesaid *William* eleven Pounds and seven Shillings, for his Costs and Charges by him about his Defence in this behalf sustained, adjudged by the Court here to the said *Charles* with his Consent, according to the form of the Statute in that case made and provided: and that the aforesaid *Charles* may have execution thereof. *Et*.

Opinion of the Court:

Replication insufficient.

Judgment, for the Defendant.  
*Quoniam nihil capit per breve.*  
 Amendment.

Costs.

Execution.

General Error assigned.

~~Wherefore~~, to wit, on *Wednesday* next after fifteen Days of *Easter* in this same Term, before the Lord the King at *Westminster*, comes the aforesaid *William Burton*, by *Peter Mannering* his Attorney, and saith, that in the Record and Process aforesaid, and also in the Giving of the Judgment in the Plaint aforesaid, it is manifestly erred in this; to wit, that the judgment aforesaid was given in  
 Form

Doon aforeſaid for the ſaid *Charles Lang* againſt the aforeſaid *William Burton*, where by the Law of the Land Judgment ſhould have been given for the ſaid *William Burton* againſt the ſaid *Charles Lang*: And this he is ready to verify. And the ſaid *William* prays the Writ of the ſaid Lord the King, to warn the ſaid *Charles Lang* to be before the ſaid Lord the King, to hear the Record and Proceſs aforeſaid: And it is granted unto him: By which the Sheriff aforeſaid is commanded that by good [and lawful Men of his Bailiwick] he cauſe the aforeſaid *Charles Lang* to know, that he be before the Lord the King from the Day of *Eaſter* in five Weeks, whereſoever [he ſhall then be in *England*,] to hear the Record and Proceſs aforeſaid, if [it ſhall have happened that in the ſame any Error ſhall have intervened;] and farther [to do and receive what the Court of the Lord the King ſhall conſider in this behalf.] The ſame Day is given to the aforeſaid *William Burton*. At which Day before the Lord the King, at Sheriff's Return *Weſtmiſter*, comes the aforeſaid *William Burton*, by his Scire fecit, Attorney aforeſaid: And the Sheriff returns, that by Virtue of the Writ aforeſaid to him directed he had cauſed the ſaid *Charles Lang* to know, that he be before the Lord the King at the Time aforeſaid in the ſaid Writ contained, by *John Den* and *Richard Fen*, good, &c; as by the ſame Writ was commanded him: Which ſaid *Charles Lang*, according to the Warning given him in this behalf, here cometh by *Thomas Webb* his Attorney. Whereupon Error assigned the ſaid *William* ſaith, that in the Record and Proceſs aforeſaid, and alſo in the Giving of the Judgment aforeſaid, it is manifeſtly erred, alleging the Error aforeſaid by him in the Form aforeſaid alleged, and prays, that the Judgment aforeſaid for the Error aforeſaid, and others, in the Record and Proceſs aforeſaid being, may be reverſed, annulled, and entirely for nothing eſteemed, and that the ſaid *Charles* may rejoin to the Errors aforeſaid, and that the Court of the ſaid Lord the King here may proceed to the Examination as well of the Record and Proceſs aforeſaid, as of the Matter aforeſaid above for Error assigned. And the ſaid *Charles* ſaith, that neither in the Record and Proceſs aforeſaid, nor in the Giving of the Judgment aforeſaid, in any thing is there erred; and he prays in like manner that the Court of the ſaid Lord the King here may proceed to the Examination as well of the Record and Proceſs aforeſaid, as of the Matters aforeſaid above for

Writ of Scire fecit, to hear Errors.

Error assigned aforeſaid.

Rejoinder; In nullo est error.

|  |   |
|--|---|
| N. X.<br>Continuance.                  | for Error assigned. And because the Court of the Lord the King here is not yet advised what Judgment to give of and upon the Premises, a Day is thereof given to the Parties aforesaid until the Morrow of the holy Trinity, before the Lord the King, wheresoever he shall then be in <i>England</i> , to hear their Judgment of and upon the Premises, for that the Court of the Lord the King here is not yet advised thereof. At which Day before the Lord the King, at <i>Westminster</i> , come the Parties aforesaid by their Attorneys aforesaid: <del>whereupon</del> , as well the Record and Process aforesaid, and the Judgment thereupon given, as the Matters aforesaid by the said <i>William</i> above for Error assigned, being seen, and by the Court of the Lord the King here being fully understood, and mature Deliberation being thereupon had, for that it appears to the Court of the Lord the King here, that in the Record and Process aforesaid, and also in the Giving of the Judgment aforesaid, it is manifestly erred, <del>therefore it is considered</del> , that the Judgment aforesaid, for the Error aforesaid, and others, in the Record and Process aforesaid, be reversed, annulled, and entirely for nothing esteemed; and that the aforesaid <i>William</i> recover against the aforesaid <i>Charles</i> his Debt aforesaid, and also fifty Pounds for his Damages which he hath sustained, as well on Occasion of the Detention of the said Debt, as for his Costs and Charges unto which he hath been put about his Suit in this behalf, to the said <i>William</i> with his Consent by the Court of the Lord the King here adjudged. And the said <i>Charles</i> in Mercy. |
| Opinion of the Court.                  |   |
| Judgment of the common Pleas reversed. |   |
| Judgment for the Plaintiff.            |   |
| Costs.                                 |   |
| Defendant amerced.                     |   |

## §. 7. Process of Execution.

Writ of Capias ad Satisfaciendum.

GEORGE the second by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, and so forth; to the Sheriff of *Oxfordshire*, Greeting. We command you, that you take *Charles Long*, late of *Barford*, Gentleman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before us in three Weeks from the Day of the holy Trinity, wheresoever We shall then be in *England*, to satisfy *William Burton* for two hundred Pounds Debt, which the said *William Burton* hath lately recovered against him in our Court before Us, and also fifty Pounds, which were adjudged in our said Court before Us to the said *William Burton*,

*Burton*, for his Damages which he hath sustained, as well by Occasion of the Detention of the said Debt, as for his Costs and Charges to which he hath been put about his Suit in this behalf, whereof the said *Charles Long* is convicted, as it appears to Us of Record: And have you there then this Writ. *Witness* Sir *Thomas Denison*\*, Knight, at *Westminster*, the nineteenth Day of *June*, in the twenty ninth Year of our Reign.

N<sup>o</sup>. X.

By Virtue of this Writ to me directed, I have taken Sheriff's Return; the Body of the within-named *Charles Long*; which I have ready before the Lord King, at *Westminster*, at the Day within-written, as within it is commanded me. *Cepi Corpus.*

WE the second by the Grace of God of Writ of *Fieri facias*. *Great Britain, France, and Ireland King, Defender of the Faith, and so forth*; to the Sheriff of *Oxfordshire*, Greeting. We commanded you, that of the Goods and Chattels within your Bailiwick of *Charles Long*, late of *Burford*, Gentleman, you cause to be made two hundred Pounds Debt, which *William Burton* lately in our Court before Us at *Westminster* hath recovered against him, and also fifty Pounds, which were adjudged in our Court before Us to the said *William*, for his Damages which he hath sustained, as well by Occasion of the Detention of his said Debt, as for his Costs and Charges to which he hath been put about his Suit in this behalf, whereof the said *Charles Long* is convicted, as it appears to Us of Record: And have that Money before Us in three Weeks from the Day of the holy *Trinity*, wheresoever We shall then be in *England*, to render to the said *William* of his Debt and Damages aforesaid: And have there then this Writ. *Witness* Sir *Thomas Denison*, Knight, at *Westminster*, the nineteenth Day of *June*, in the twenty ninth Year of our Reign.

By Virtue of this Writ to me directed, I have caused Sheriff's Return; to be made of the Goods and Chattels of the within-written *Charles Long*, two hundred and fifty Pounds; Which I have ready before the Lord the King at *Westminster* at the Day within-written, as it is within commanded me. *Fieri feci.*

\* The senior puisné Justice; there being no chief Justice that Term.

N<sup>o</sup>. XI.N<sup>o</sup>. XI.*Proceedings on an Indictment of MURDER,  
at the Assises.*

## §. 1. RECORD of an Indictment and Conviction of Murder.

Session of Oyer  
and Terminer.*Warwickshire,* }  
to wit.. }

Commission of

It is remembered, that at the general Session of the Lord the King of Oyer and Terminer holden at *Warwick*, in and for the said County of *Warwick*, on Friday the twelfth Day of *March* in the second Year of the Reign of the Lord *God* or the third, now King of *Great Britain*, before Sir *Michael Foster*, Knight, one of the Justices of the said Lord the King assigned to hold Pleas before the King himself, Sir *Edward Clive*, Knight, one of the Justices of the said Lord the King, of his Court of common Bench, and others their Fellows, Justices of the said Lord the King, assigned by Letters patent of the said Lord the King, under his great Seal of *Great Britain*, made to them the aforesaid justices and others, and any two or more of them, (whereof one of them the said Sir *Michael Foster* and Sir *Edward Clive*, the said Lord the King would have to be one) to enquire (by the Oath of good and lawful Men of the County aforesaid, by whom the Truth of the Matter might be the better known, and by other Ways, Methods, and Means, whereby they could or might the better know, as well within Liberties as without) more fully the Truth of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeittings, Clippings, Washings, false Coinings, and other Falsities of the Monies of *Great Britain*, and of other Kingdoms or Dominions whatsoever; and of all Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, unlawful Meetings and Conventicles, unlawful uttering of Words, unlawful Assemblies, Misprisions, Confederacies, false Allegations, Trespases, Riots, Routs, Retentions, Escapes, Contempts, Falsities, Negligences, Concealments, Maintenances, Oppressions, Champarties, Deceits, and all other Misdeeds, Offences, and Injuries whatsoever, and also the Accessories of the same,

same, within the County aforesaid, as well within Liberties as without, by whomsoever and howsoever done, had, perpetrated, and committed, and by whom, to whom, when, how, and in what manner; and of all other Articles and Circumstances in the said Letters patent of the said Lord the King specified, the Premises and every or any of them howsoever concerning; and for this time to hear and determine the said Treasons and other the Premises, according to the Law and Custom of the Realm of *England*; and also Keepers of the Peace, and Justices of the said Lord the King, assigned to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed within the County aforesaid: by the Oath of Sir *James Thompson*, Baronet, *Charles Roper*, *Henry Dawes*, *Peter Wilson*, *Samuel Rogers*, *John Dawson*, *James Philips*, *John Mayo*, *Richard Savage*, *William Bell*, *James Morris*, *Laurence Hall*, and *Charles Carter*, Esquires, good and lawful Men of the County aforesaid, then and there impanelled, sworn, and charged to enquire for the said Lord the King and for the Body of the said County, it is presented, *that Peter Hunt*, late of the Parish of *Lighborne*, in the said County, Gentleman, not having the fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, on the fifth Day of *March* in the said second Year of the Reign of the said Lord the King, at the Parish of *Lighborne* aforesaid, with Force and Arms, in and upon one *Samuel Collins*, in the Peace of God and of the said Lord the King then and there being, feloniously, wilfully, and of his Malice aforethought, did make an Assault; and that the said *Peter Hunt* with a certain drawn Sword, made of Iron and Steel, of the value of five Shillings, which he the said *Peter Hunt* in his right Hand then and there had and held, him the said *Samuel Collins* in and upon the left Side of the Belly of him the said *Samuel Collins* then and there feloniously, wilfully, and of his Malice aforethought, did strike, thrust, stab, and penetrate; giving unto the said *Samuel Collins*, then and there, with the Sword drawn as aforesaid, in and upon the left Side of the Belly of him the said *Samuel Collins*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches; of which said mortal Wound he the said *Samuel Collins*, at the Parish of *Lighborne* aforesaid in the said County of *Warwick*, from the said fifth Day of *March* in the Year aforesaid until the seventh Day of the same Month



N<sup>o</sup>. XI.Capias. 

Session of Gaol-delivery.

Arraignment.

Plea; not guilty.  
Issue.

in the same Year, did languish and languishing did live; on which said seventh Day of *March*, in the Year aforesaid, the said *Samuel Collins*, at the Parish of *Lightborne* aforesaid in the County aforesaid, of the said mortal Wound did die: and so the Jurors aforesaid upon their Oath aforesaid, do say, that the said *Peter Hunt* him the said *Samuel Collins*, in Manner and Form aforesaid, feloniously, wilfully, and of his Malice aforethought, did kill and murder, against the Peace of the said Lord the now King, his Crown, and Dignity. **Whereupon** the Sheriff of the County aforesaid is commanded, that he omit not for any Liberty in his Bailiwick, but that he take the said *Peter Hunt*, if he may be found in his Bailiwick, and him safely keep, to answer to the Felony and Murder whereof he stands indicted. **Whereto** said Indictment the said Justices of the Lord the King abovenamed, afterwards, to wit, at the Delivery of the Gaol of the said Lord the King, holden at *Warwick* in and for the County aforesaid, on *Friday* the sixth Day of *August*, in the said second Year of the Reign of the said Lord the King, before the right honourable *William Lord Mansfield*, chief Justice of the said Lord the King assigned to hold Pleas before the King himself, Sir *Sidney Stafford Smythe*, Knight, one of the Barons of the Exchequer of the said Lord the King, and others their Fellows, Justices of the said Lord the King, assigned to deliver his said Gaol of the County aforesaid of the Prisoners therein being, by their proper Hands do deliver here in Court of Record in Form of Law to be determined. **And afterwards**, to wit, at the same Delivery of the Gaol of the said Lord the King of his County aforesaid, on the said *Friday* the sixth Day of *August*, in the said second Year of the Reign of the said Lord the King, before the said Justices of the Lord the King last above named and others their Fellows aforesaid, here cometh the said *Peter Hunt*, under the Custody of *William Browne*, Esquire, Sheriff of the County aforesaid, (in whose Custody in the Gaol of the County aforesaid, for the cause aforesaid, he had been before committed) being brought to the Bar here in his proper Person by the said Sheriff, to whom he is here also committed; **And** forthwith being demanded concerning the Premises in the said Indictment above specified and charged upon him, how he will acquit himself thereof, he saith, that he is not guilty thereof; and thereof for Good and Evil he

he puts himself upon the Country: And John Blencowe, Esquire, Clerk of the Assises for the County aforesaid, who prosecutes for the said Lord the King in this behalf, doth the like: ~~Therefore~~ <sup>Verdict.</sup> let a Jury thereupon here immediately come before the said Justices of the Lord the King last abovementioned, and others their Fellows aforesaid, of free and lawful Men of the Neighbourhood of the said Parish of *Lighthorne* in the County of *Warwick* aforesaid, by whom the Truth of the Matter may be the better known, and who are not of Kin to the said *Peter Hunt*, to recognize upon their Oath, whether the said *Peter Hunt* be guilty of the Felony and Murder in the Indictment aforesaid above specified, or not guilty: because as well the said *John Blencowe*, who prosecutes for the said Lord the King in this Behalf, as the said *Peter Hunt*, have put themselves upon the said Jury. And the Jurors of the said Jury by the said Sheriff for this Purpose impannelled and returned, to wit, *David Williams, John Smith, Thomas Horne, Charles Noker, Richard May, Walter Duke, Matthew Lyon, James White, William Bates, Oliver Green, Bartholomew Nash, and Henry Long*, being called, come; Who being elected, tried, and sworn, to speak the Truth of and concerning the Premises upon their Oath say, ~~that~~ <sup>Verdict; guilty</sup> the said *Peter Hunt* is guilty of the Felony and Murder aforesaid, on him above charged of Murder. in the Form aforesaid, as by the Indictment aforesaid is above supposed against him; and that the said *Peter Hunt* at the time of committing the said Felony and Murder, or at any time since to this Time, had not nor hath any Goods or Chattels, Lands or Tenements, in the said County of *Warwick*, or elsewhere, to the Knowledge of the said Juror. And upon this it is forthwith demanded of the said *Peter Hunt*, if he hath or knoweth any thing to say, wherefore the said Justices here ought not upon the Premises and Verdict aforesaid to proceed to Judgment and Execution against him: who nothing farther saith, unless as he before had said. ~~Whereupon~~ <sup>Judgment of Death,</sup> all and singular the Premises being seen, and by the said Justices here fully understood, ~~it is considered~~ <sup>and Dissection.</sup> by the Court here, that the said *Peter Hunt* be taken to the Gaol of the said Lord the King of the said County of *Warwick* from whence he came, and from thence to the Place of execution on *Monday* now next ensuing, being the ninth Day of this Instant *August*, and there be hanged by the neck until he be dead; and that afterwards his Body be dissected and anatomized,

N<sup>o</sup>. XI.§. 2. *Conviction of Manlaughter.*

Verdict; — not — upon their Oath say, that the said *Peter Hunt* is guilty of Murder; not guilty of the Murder aforesaid, above charged upon him; but that the said *Peter Hunt* is guilty of the felonious Slaying of the aforesaid *Samuel Collins*; and that he had not nor hath any Goods or Chattels, Lands or Tenements, at the Time of the Felony and Manlaughter aforesaid, or ever afterwards to this Time, to the Knowledge of the said Jurors. And immediately it is demanded of the said *Peter Hunt*, if he hath or knoweth any thing to say, wherefore the said Justices here ought not upon the Premises and Verdict aforesaid to proceed to Judgment and Execution against him: ~~who saith~~ that he is a Clerk, and prayeth the Benefit of Clergy to be allowed him in this Behalf. ~~Whereupon~~, all and singular the Premises being seen, and by the said Justices here fully understood, it is considered by the Court here, that the said *Peter Hunt* be burned in his left Hand, and delivered. And immediately he is burned in his left Hand, and is delivered, according to the Form of the Statute.

Clergy prayed.

Judgment to be burned in the hand, and delivered.

§. 3. *Entry of a Trial instant in the Court of King's Bench, upon a collateral Issue; and Rule of Court for Execution thereon.*

*Michaelmas* Term, in the sixth Year of the Reign of *King George* the third.

*Mabes Corpus.*      *Kent*; The King } The prisoner at the Bar being brought against } into this Court in Custody of the Sheriff of the County of *Sussex*, by Virtue of his Majesty's Writ of *babeas corpus*, it is ordered that the said Writ and the Return thereto be filed. And it appearing by a certain Record of Attainder, which hath been removed into this Court by his Majesty's Writ of *certiorari*, that

Record of Attainder read;

that the Prisoner at the Bar stands attainted, by the Name of *Thomas Rogers*, of Felony for a Robbery on the Highway, and the said Prisoner at the Bar having heard the Record of the said Attainder now read to him, is now asked by the Court here, what he hath to say for himself, why the Court here should not proceed to award Execution against him upon the said Attainder. *He* for Plea saith, that he is not the same *Thomas Rogers* in the said Record of Attainder named, and against whom Judgment was pronounced: and this he is ready to verify and prove, &c. *To* which said Plea the honourable *Charles Yorke*, Esquire, Attorney general of our present sovereign Lord the King, who for our said Lord the King in this Behalf prosecuteth, being now present here in Court, and having heard what the said Prisoner at the Bar hath now alleged, for our said Lord the King by way of reply saith, that the said Prisoner now here at the Bar is the same *Thomas Rogers* in the said Record of Attainder named, and against whom Judgment was pronounced as aforesaid; and this he prayeth may be enquired into by the Country; and the said Prisoner at the Bar doth the like: *Therefore* let a Jury in this Behalf immediately come here into Court, by whom the Truth of the Matter will be the better known, and who have no Affinity to the said Prisoner, to try upon their Oath, whether the said Prisoner at the Bar be the same *Thomas Rogers* in the said Record of Attainder named, and against whom Judgment was so pronounced as aforesaid, or not: because as well the said *Charles Yorke*, Esquire, Attorney general of our said Lord the King, who for our said Lord the King in this Behalf prosecutes, as the said Prisoner at the Bar, have put themselves in this Behalf upon the said Jury. *And* immediately thereupon the said Jury come here into Court; and being elected, tried, and sworn to speak the Truth touching and concerning the Premises aforesaid, and having heard the said Record read to them, do say upon their Oath, that the said Prisoner at the Bar is the same *Thomas Rogers* in the said Record of Attainder named, and against whom Judgment was so pronounced as aforesaid, in Manner and Form as the said Attorney General hath by his said Replication to the said Plea of the said Prisoner now here at the Bar alleged. *And* hereupon the said Attorney General on Behalf of our said Lord the King now prayeth, that the Court here would

N<sup>o</sup>. XI.

for Felony and Robbery.

Prisoner asked what he can say in Bar of Execution.

Plea; not the same Person.

Replication,

averring that he

is.

Issue joined.

Verdict awarded

instantly.

Jury sworn.

Verdict; that he

is the same.

N<sup>o</sup>. XI.  
Award of Execu-  
tion.

proceed to award Execution against him the said *Thomas Rogers* upon the said Attainder. ~~Whereupon~~, all and singular the Premises being now seen and fully understood by the Court here, ~~it is ordered~~ by the Court here, that Execution be done upon the said Prisoner at the Bar for the said Felony in pursuance of the said Judgment, according to due Form of Law: ~~And~~ it is lastly ordered, that he the said *Thomas Rogers*, the Prisoner at the Bar, be now committed to the Custody of the Sheriff of the County of *Kent* (now also present here in Court) for the purpose aforesaid; and that the said Sheriff of *Kent* do Execution upon the said Defendant the Prisoner at the Bar for the said Felony, in Pursuance of the said Judgment, according to due Form of Law.

On the Motion of Mr. Attorney General.

By the Court.

§. 4. *Warrant of Execution on Judgment of Death, at the general Gaol-delivery in London and Middlesex.*

|  |   |   |
|--|---|---|
| <p><i>London</i><br/>and<br/><i>Middlesex.</i></p> | } | <p>To the Sheriffs of the City of <i>London</i>; and<br/>to the Sheriff of the County of <i>Middlesex</i>:<br/>and to the Keeper of his Majesty's Gaol of<br/><i>Newgate</i>.</p> |
|--|---|---|

~~Whereas~~ at the Session of Gaol Delivery of *Newgate*, for the City of *London* and County of *Middlesex*, holden at Justice Hall in the Old Bailey, on the nineteenth Day of *October* last, *Patrick Mabony*, *Roger Jones*, *Charles King*, and *Mary Smith*, received Sentence of Death for the respective Offences in their Several Indictments mentioned; ~~Now it is hereby ordered~~, that Execution of the said Sentence be made and done upon them the said *Patrick Mabony* and *Roger Jones*, on *Wednesday* the ninth Day of this Instant Month of *November* at the usual Place of Execution. ~~And~~ it is his Majesty's Command, that Execution of the said Sentence upon them the said *Charles King* and

and *Mary Smith* be respited, until his Majesty's Pleasure touching them be farther known.

N<sup>o</sup>. XI.

Given under my Hand and Seal this fourth Day of *November*, one thousand seven hundred and sixty eight.

*James Eyre*, Recorder. L. S.

§. 5. *Writ of Execution upon a Judgment of Murder, before the King in Parliament.*

WE the second by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, and so forth; to the Sheriffs of London and Sheriff of *Middlesex*, greeting. **Whereas** *Lawrence Earl Ferrers, Viscount Tamworth*, hath been indicted of Felony and Murder by him done and committed, which said Indictment hath been certified before us in our present Parliament; and the said *Lawrence Earl Ferrers, Viscount Tamworth*, hath been thereupon arraigned, and upon such arraignment hath pleaded not guilty; and the said *Lawrence Earl Ferrers, Viscount Tamworth*, hath before us in our said Parliament been tried, and in due Form of Law convicted thereof; and whereas Judgment hath been given in our said Parliament, that the said *Lawrence Earl Ferrers, Viscount Tamworth*, shall be hanged by the Neck till he is dead, and that his Body be dissected and anatomized, the Execution of which Judgment yet remaineth to to be done: **We** require, and by these Presents strictly command you, that upon *Monday* the fifth Day of *May* Instant, between the Hours of nine in the Morning and one in the Afternoon of the same Day, him the said *Lawrence Earl Ferrers, Viscount Tamworth*, without the Gate of our Tower of *London* (to you then and there to be delivered, as by another Writ to the Lieutenant of our Tower of *London* or to his Deputy directed, we have com-

P 3

manded)

N°. XI.

manded) into your Custody you then and there receive: and him, in your Custody so being, you forthwith convey to the accustomed Place of Execution at *Tyburn* and that you do cause Execution to be done upon the said *Lawrence Earl Ferrers*, Viscount *Tamworth*, in your Custody so being, in all Things according to the said Judgment. And this you are by no Means to omit, at your peril. ~~Witness~~ Ourself at *Westminster* the second Day of *May*, in the thirty third Year of our Reign.

*Yorks and Yorks.*

AN

AN ALPHABETICAL  
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SECRET

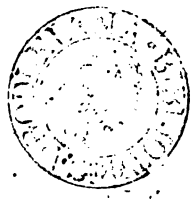
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